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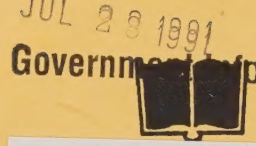

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INSTRUCTIONS TO THE AMERICAN DELEGATES TO THE HAGUE PEACE CONFERENCES AND THEIR OFFICIAL REPORTS

EDITED WITH AN INTRODUCTION
BY
JAMES BROWN SCOTT
DIRECTOR

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INTRODUCTION

There comes a time when people must stand up to be counted, or, more elegantly expressed, when they must confess their faith in public, and it would seem that the present is a time when those who believe in the wisdom and in the efficacy of the Hague Conventions should give public expression to their belief.

The United States welcomed the call to a conference issued by Nicholas II, the present Czar of All the Russias, and the American delegates to the First Hague Conference, under the leadership of the Honorable Andrew D. White, were not the least influential in negotiating the Convention for the pacific settlement of international disputes, at a time when it seemed likely to fail, and which, when negotiated, justified the call of the Conference.

Secretary of State Hay's instructions to the American delegates, contained a brief history of the peace movement in America and positive directions to secure the establishment of a Permanent Court of Arbitration.

The United States not merely welcomed the call to the Second Hague Conference but grew weary of waiting for the call which did not come. It therefore sounded the Governments, twenty-six in number, represented at the First Conference as to their willingness to attend a second conference, suggested the broad outlines of a program, and expressed "the President's desire and hope that the undying memories which cling about The Hague as the cradle of the beneficent work which had its beginning in 1899 may be strengthened by holding a second peace conference in that historical city." The replies to the circular instruction, dated October 21, 1904, were uniformly favorable and, the war between Japan and Russia being brought to an end by the good offices of the President of the United States, who had recently proposed to the Powers the meeting of a second conference, steps were taken by Russia immediately after the signing of the treaty of Portsmouth on September 6, 1905, to arrange for that second conference whose meeting had already been assured by the President of the United States.

Through the tactful intervention of Mr. Root, who had succeeded Mr. Hay as Secretary of State upon his untimely death, a method was devised allowing non-signatory States to adhere to the acts of the

First Conference, and through Secretary Root's wisdom, foresight and initiative all American States were invited to send delegates to the Second Conference, instead of the three American republics alone invited to the First.

Secretary Root's instructions to the American delegates to the Second Conference show the same interest in that august assembly, and the desire for positive results tending to preserve the peace of the world, as did the instructions of his illustrious predecessor.

The American delegates to the Second Conference, under the leadership of the Honorable Joseph H. Choate, were not the least influential in securing the acceptance in principle of the Court of Arbitral Justice, a court to be composed of permanent judges acting under a sense of judicial responsibility, to be established alongside of the so-called Permanent Court of the First Conference, due in such large measure to the efforts of the American delegation at that Conference.

The reports of the American delegates to the two Conferences are clear, accurate and convincing documents, written from the standpoint of firm believers in international justice and therefore in international peace. They are worthy to be placed side by side, both in spirit and execution, with the instructions of the Secretaries of State, and they are here printed side by side in order that the American people may, in this tragic moment of the world's history, be assured that the leadership in international organization has passed into firm and enlightened hands in this Republic of ours, which again has become the hope of mankind.

America of the present day is not wholly unworthy of the founders of the Republic and can be trusted to exercise its leadership, which it would have won had it not been thrust upon it by the madness and folly of Europe, in the interest of the small Powers whose only defense is justice, as well as in the interest of the larger Powers whose well-being, like the small Powers, is best promoted by justice.

It has been the wont of European diplomats to question the good faith of the United States in entering into treaties, because of the difficulty that Presidents have had from time to time in securing the advice and the consent of the Senate to their ratification. More than one diplomat questioned the good faith of the United States at the Second Hague Conference, but, although our Government is not without its shortcomings, and has no doubt made mistakes betimes, it went to war to secure the freedom of Cuba and did not annex it at the end of the

war; it occupied the Island at a later date, but, in accordance with the provisions of a treaty granting that permission, withdrew when order had been restored, in accordance with its promise so to do. Since the adjournment of the Second Hague Conference the world has witnessed the respect which the United States accords to treaties by repealing a solemn Act of Congress giving a slight benefit to the ships of the United States passing through a canal built wholly by its money, because a foreign Government with which it had a treaty asserted that the exemption from the payment of tolls by American ships engaged in the coastwise trade was a violation of the spirit if not of the letter of the treaty.

It is hoped that this little book will interest every person into whose hands it may fall, and in so doing tend to create a public opinion favorable to the Hague Conferences and an insistence that violent hands be not laid upon its work.

JAMES BROWN SCOTT,
Director of the Division of International Law.

WASHINGTON, D. C.,
February 28, 1916.

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THE HAGUE CONFERENCE OF 1899

PRELIMINARY DOCUMENTS

RUSSIAN CIRCULAR NOTE PROPOSING THE FIRST PEACE CONFERENCE[1]

The maintenance of general peace and a possible reduction of the excessive armaments which weigh upon all nations present themselves, in the existing condition of the whole world, as the ideal towards which the endeavors of all Governments should be directed.

The humanitarian and magnanimous views of His Majesty the Emperor, my august master, are in perfect accord with this sentiment.

In the conviction that this lofty aim is in conformity with the most essential interests and the legitimate aspirations of all Powers, the Imperial Government believes that the present moment would be very favorable for seeking, by means of international discussion, the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and above all of limiting the progressive development of existing armaments.

In the course of the last twenty years the longings for a general state of peace have become especially pronounced in the consciences of civilized nations. The preservation of peace has been put forward as the object of international policy. In its name great States have formed powerful alliances; and for the better guaranty of peace they have developed their military forces to proportions hitherto unknown and still continue to increase them without hesitating at any sacrifice.

All these efforts nevertheless have not yet led to the beneficent results of the desired pacification.

---

[1]Handed to the diplomatic representatives August 12/24, 1898, by Count Mouravieff, Russian Minister for Foreign Affairs, during the weekly reception in the Foreign Office, Petrograd. French text in *Actes et documents relatifs au programme de la Conférence de la paix, publiés d'ordre du Gouvernement* (The Hague, 1899); British Parliamentary Paper, Russia, No. 1, 1899, p. 1; French Diplomatic Document, *Conference internationale de la paix, 1899*, p. 1. English versions in *Foreign Relations of the United States*, 1898, p. 541; Holls, *The Peace Conference at The Hague*, p. 8; Scott, *The Hague Peace Conferences of 1899 and 1907*, vol. ii, p. 1; Moore, *Digest of International Law*, vol. 7, p. 78; Darby, *International Tribunals* (4th ed.), p. 634; and the British Parliamentary Paper above cited.

The ever-increasing financial charges strike and paralyze public prosperity at its source; the intellectual and physical strength of the nations, their labor and capital, are for the most part diverted from their natural application and unproductively consumed; hundreds of millions are spent in acquiring terrible engines of destruction, which though to-day regarded as the last word of science are destined to-morrow to lose all value in consequence of some fresh discovery in the same field. National culture, economic progress, and the production of wealth are either paralyzed or perverted in their development.

Moreover, in proportion as the armaments of each Power increase, so do they less and less attain the object aimed at by the Governments. Economic crises, due in great part to the system of amassing armaments to the point of exhaustion, and the continual danger which lies in this accumulation of war material, are transforming the armed peace of our days into a crushing burden which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of affairs be prolonged, it will inevitably lead to the very cataclysm which it is desired to avert, and the impending horrors of which are fearful to every human thought.

In checking these increasing armaments and in seeking the means of averting the calamities which threaten the entire world lies the supreme duty to-day resting upon all States.

Imbued with this idea, His Majesty has been pleased to command me to propose to all the Governments which have accredited representatives at the Imperial Court the holding of a conference to consider this grave problem.

This conference would be, by the help of God, a happy presage for the century about to open. It would converge into a single powerful force the efforts of all the States which sincerely wish the great conception of universal peace to triumph over the elements of disturbance and discord. It would at the same time cement their agreement by a solemn avowal of the principles of equity and law, upon which repose the security of States and the welfare of peoples.

COUNT MOURAVIEFF.

ST. PETERSBURG, *August 12, 1898.*

RUSSIAN CIRCULAR NOTE PROPOSING THE PROGRAM OF THE FIRST CONFERENCE[1]

ST. PETERSBURG, *December 30, 1898.*[2]

When, during the month of August last, my august master commanded me to propose to the Governments which have representatives in St. Petersburg the meeting of a conference with the object of seeking the most effective means of ensuring to all peoples the benefits of a real and lasting peace and, above all, of limiting the progressive development of existing armaments, there appeared to be no obstacle in the way of realization at no distant date of this humanitarian scheme.

The cordial reception accorded by nearly all the Powers to the step taken by the Imperial Government could not fail to strengthen this expectation. While highly appreciating the sympathetic terms in which the adhesions of most of the Powers were expressed, the Imperial Cabinet has been also able to collect, with lively satisfaction, evidence of the warmest approval which has reached it, and continues to be received, from all classes of society in various parts of the world.

Notwithstanding the strong current of opinion which exists in favor of the ideas of general pacification, the political horizon has recently undergone a decided change. Several Powers have undertaken fresh armaments, striving to increase further their military forces, and in the presence of this uncertain situation it might be asked whether the Powers consider the present moment opportune for the international discussion of the ideas set forth in the circular of August 12/24.

In the hope, however, that the elements of trouble agitating political centers will soon give place to a calmer disposition of a nature to favor the success of the proposed conference, the Imperial Government is of the opinion that it would be possible to proceed forthwith to a preliminary exchange of ideas between the Powers, with the object:

(a) Of seeking without delay means for putting a limit to the progressive increase of military and naval armaments, a question the solution of which becomes evidently more and more urgent in view of the fresh extension given to these armaments; and

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[1]Handed to the diplomatic representatives at Petrograd, January 11, 1899, by Count Mouravieff. French text in *Actes et documents relatifs au programme de la Conférence de la paix;* British Parliamentary Paper, Miscellaneous, No. 1, 1899, p. 2; French Diplomatic Document, *Conference internationale de la paix,* 1899, p. 3. English versions in *Foreign Relations of the United States,* 1898, p. 551; Holls, *op. cit.,* p. 24; Scott, *op. cit.,* vol. ii, p. 3; Moore, *op cit.,* vol. 7, p. 80; Darby, *op. cit.,* p. 638; and the British Parliamentary Paper above cited.

[2]January 11, 1899, new style.

(b) Of preparing the way for a discussion of the questions relating to the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy.

In the event of the Powers considering the present moment favorable for the meeting of a conference on these bases it would certainly be useful for the cabinets to come to an understanding on the subject of the program of its work.

The subjects to be submitted for international discussion at the conference could, in general terms, be summarized as follows:

1. An understanding stipulating the non-augmentation, for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them; preliminary study of the ways in which even a reduction of the aforesaid effectives and budgets could be realized in the future.
2. Interdiction of the employment in armies and fleets of new firearms of every description and of new explosives, as well as powder more powerful than the kinds used at present, both for guns and cannons.
3. Limitation of the use in field fighting of explosives of a formidable power, such as are now in use, and prohibition of the discharge of any kind of projectile or explosive from balloons or by similar means.
4. Prohibition of the use in naval battles of submarine or diving torpedo boats, or of other engines of destruction of the same nature; agreement not to construct in the future war-ships armed with rams.
5. Adaptation to naval war of the stipulations of the Geneva Convention of 1864, on the base of the additional articles of 1868.
6. Neutralization, for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles.
7. Revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified.
8. Acceptance, in principle, of the use of good offices, mediation, and voluntary arbitration, in cases where they are available, with the purpose of preventing armed conflicts between nations; understanding in relation to their mode of application and establishment of a uniform practice in employing them.

It is well understood that all questions concerning the political relations of States, and the order of things established by treaties, as in general all questions which do not directly fall within the program

adopted by the cabinets, must be absolutely excluded from the deliberations of the conference.

In requesting you, sir, to be good enough to apply to your Government for instructions on the subject of my present communication, I beg you at the same time to inform it that, in the interest of the great cause which my august master has so much at heart, His Imperial Majesty considers it advisable that the conference should not sit in the capital of one of the Great Powers, where are centered so many political interests, which might, perhaps, impede the progress of a work in which all countries of the universe are equally interested.

I have, etc.,

COUNT MOURAVIEFF.

INSTRUCTIONS TO THE AMERICAN DELEGATES TO THE HAGUE CONFERENCE OF 1899[1]

Mr. Hay to Hon. Andrew D. White, Hon. Seth Low, Hon. Stanford Newel, Capt. Alfred T. Mahan, U. S. N., Capt. William Crozier, U. S. A., delegates on the part of the President of the United States.

DEPARTMENT OF STATE,
Washington, April 18, 1899.

GENTLEMEN: You have been appointed by the President to constitute a commission to represent him at an international conference called by His Imperial Majesty the Emperor of Russia to meet at The Hague, at a time to be indicated by the Government of the Netherlands, for the purpose of discussing the most efficacious means of assuring to all peoples the "benefits of a real and durable peace."

Upon your arrival at The Hague you will effect an organization of your commission, whose records will be kept by your secretary, Hon. Frederick W. Holls. All reports and communications will be made through this Department, according to its customary forms, for preservation in the archives.

The program of topics suggested by the Russian Minister of Foreign Affairs for discussion at the Conference in his circular of December 30, 1898, is as follows:

1. An understanding stipulating the non-augmentation, for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them; preliminary study of the ways in which even a reduction of the aforesaid effectives and budgets could be realized in the future.

2. Interdiction of the employment in armies and fleets of new firearms of every description and of new explosives, as well as powder more powerful than the kinds used at present, both for guns and cannons.

3. Limitation of the use in field fighting of explosives of a formidable power, such as now in use, and prohibition of the discharge of any kind of projectiles or explosives from balloons or by similar means.

4. Prohibition of the use in naval battles of submarine or diving

[1] *Foreign Relations of the United States,* 1899, p. 511; Scott, *op. cit.,* vol ii, p. 6.

torpedo boats, or of other engines of destruction of the same nature; agreement not to construct in the future war-ships armed with rams.

5. Adaptation to naval war of the stipulation of the Geneva Convention of 1864, on the base of the additional articles of 1868.

6. Neutralization, for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles.

7. Revision of the Declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified.

8. Acceptance, in principle, of the use of good offices, mediation, and voluntary arbitration, in cases where they are available, with the purpose of preventing armed conflicts between nations; understanding in relation to their mode of application and establishment of a uniform practice in employing them.

It is understood that all questions concerning the political relations of States and the order of things established by treaties, as in general all the questions which shall not be included directly in the program adopted by the cabinets, should be absolutely excluded from the deliberations of the Conference.

The first article, relating to the non-augmentation and future reduction of effective land and sea forces, is, at present, so inapplicable to the United States that it is deemed advisable for the delegates to leave the initiative upon this subject to the representatives of those Powers to which it may properly belong. In comparison with the effective forces, both military and naval, of other nations, those of the United States are at present so far below the normal quota that the question of limitation could not be profitably discussed.

The second, third, and fourth articles, relating to the non-employment of firearms, explosives, and other destructive agents, the restricted use of existing instruments of destruction, and the prohibition of certain contrivances employed in naval warfare, seem lacking in practicability, and the discussion of these propositions would probably prove provocative of divergence rather than unanimity of view. It is doubtful if wars are to be diminished by rendering them less destructive, for it is the plain lesson of history that the periods of peace have been longer protracted as the cost and destructiveness of war have increased. The expediency of restraining the inventive genius of our people in the direction of devising means of defense is by no means clear, and considering the temptations to which men and na-

tions may be exposed in a time of conflict, it is doubtful if an international agreement to this end would prove effective. The dissent of a single powerful nation might render it altogether nugatory. The delegates are, therefore, enjoined not to give the weight of their influence to the promotion of projects the realization of which is so uncertain.

The fifth, six, and seventh articles, aiming in the interest of humanity to succor those who by the chance of battle have been rendered helpless, thus losing the character of effective combatants, or to alleviate their sufferings, or to ensure the safety of those whose mission is purely one of peace and beneficence, may well awake the cordial interest of the delegates, and any practicable propositions based upon them should receive their earnest support.

The eighth article, which proposes the wider extension of good offices, mediation and arbitration, seems likely to open the most fruitful field for discussion and future action. "The prevention of armed conflicts by pacific means," to use the words of Count Mouravieff's circular of December 30, is a purpose well worthy of a great international convention, and its realization in an age of general enlightenment should not be impossible. The duty of sovereign states to promote international justice by all wise and effective means is only secondary to the fundamental necessity of preserving their own existence. Next in importance to their independence is the great fact of their interdependence. Nothing can secure for human government and for the authority of law which it represents so deep a respect and so firm a loyalty as the spectacle of sovereign and independent States, whose duty it is to prescribe the rules of justice and impose penalties upon the lawless, bowing with reverence before the august supremacy of those principles of right which give to law its eternal foundation.

The proposed conference promises to offer an opportunity thus far unequaled in the history of the world for initiating a series of negotiations that may lead to important practical results. The long-continued and widespread interest among the people of the United States in the establishment of an international court, as evidenced in the historical *résumé* attached to these instructions as Annex A[1], gives assurance that the proposal of a definite plan of procedure by this Government for the accomplishment of this end would express the desires and aspirations of this nation. The delegates are, therefore, enjoined to propose, at an opportune moment, the plan for an inter-

[1] *Post*, p. 9.

national tribunal, hereunto attached as Annex B[1], and to use their influence in the conference in the most effective manner possible to procure the adoption of its substance or of resolutions directed to the same purpose. It is believed that the disposition and aims of the United States in relation to the other sovereign Powers could not be expressed more truly or opportunely than by an effort of the delegates of this Government to concentrate the attention of the world upon a definite plan for the promotion of international justice.

Since the Conference has its chief reason of existence in the heavy burdens and cruel waste of war, which nowhere affect innocent private persons more severely or unjustly than in the damage done to peaceable trade and commerce, especially at sea, the question of exempting private property from destruction or capture on the high seas would seem to be a timely one for consideration.

As the United States has for many years advocated the exemption of all private property not contraband of war from hostile treatment, you are authorized to propose to the Conference the principle of extending to strictly private property at sea the immunity from destruction or capture by belligerent Powers which such property already enjoys on land as worthy of being incorporated in the permanent law of civilized nations.

I am, etc.,

JOHN HAY.

[*Annex A*]

HISTORICAL RÉSUMÉ

From time to time in the history of the United States, propositions have been made for the establishment of a system of peaceful adjustment of differences arising between nations. As early as February, 1832, the Senate of Massachusetts adopted, by a vote of 19 to 5, a resolution expressing the opinion that "some mode should be established for the amicable and final adjustment of all international disputes instead of resorting to war."

A similar resolution was unanimously passed by the house of representatives of the same State in 1837, and by the senate by a vote of 35 to 5.

A little prior to 1840 there was much popular agitation regarding

[1] *Post*, p. 14.

the convocation of a congress of nations for the purpose of establishing an international tribunal. This idea was commended by resolutions adopted by the legislature of Massachusetts in 1844 and by the legislature of Vermont in 1852.

In February, 1851, Mr. Foote, from the Committee on Foreign Relations, reported to the Senate of the United States a resolution that "in the judgment of this body it would be proper and desirable for the Government of these United States whenever practicable to secure in its treaties with other nations a provision for referring to the decision of umpires all future misunderstandings that can not be satisfactorily adjusted by amicable negotiations in the first instance, before a resort to hostilities shall be had."

Two years later Senator Underwood, from the same committee, reported a resolution of advice to the President suggesting a stipulation in all treaties hereafter entered into with other nations referring the adjustment of any misunderstanding or controversy to the decision of disinterested and impartial arbitrators to be mutually chosen.

May 31, 1872, Mr. Sumner introduced in the Senate a resolution in which, after reviewing the historical development of municipal law and the gradual suppression of private war, and citing the progressive action of the Congress of Paris with regard to neutrals, he proposed the establishment of a tribunal to be clothed with such authority as to make it a "complete substitute for war," declaring a refusal to abide by its judgment hostile to civilization, to the end that "war may cease to be regarded as a proper form of trial between nations."

In 1874 a resolution favoring general arbitration was passed by the House of Representatives.

April 1, 1883, a confidential inquiry was addressed to Mr. Frelinghuysen, Secretary of State, by Colonel Frey, then Swiss Minister to the United States, regarding the possibility of concluding a general treaty of arbitration between the two countries. Mr. Frelinghuysen, citing the general policy of this country in past years, expressed his disposition to consider the proposition with favor. September 5, 1883, Colonel Frey submitted a draft of a treaty, the reception of which was acknowledged by Mr. Frelinghuysen on the 26th of the same month. This draft, adopted by the Swiss Federal Council July 24, 1883, presented a short plan of arbitration. These negotiations were referred to in the President's Annual Message for 1883, but were not concluded.

In 1888, a communication having been made to the President and Congress of the United States by two hundred and thirty-five members of the British Parliament, urging the conclusion of a treaty of arbitration between the United States and Great Britain, and reenforced by petitions and memorials from multitudes of individuals and associations from Maine to California, great enthusiasm was exhibited in its reception by eminent citizens of New York. As a result of this movement, on June 13, 1888, Mr. Sherman, from the Committee on Foreign Relations, reported to the Senate a joint resolution requesting the President "to invite, from time to time, as fit occasions may arise, negotiations with any Government with which the United States has or may have diplomatic relations, to the end that the differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means."

November 29, 1881, Mr. Blaine, Secretary of State, invited the Governments of the American nations to participate in a Congress to be held in the city of Washington, November 24, 1882, "for the purpose of considering and discussing the methods of preventing war between the nations of America." For special reasons the enterprise was temporarily abandoned, but was afterwards revived and enlarged in Congress, and an act was passed authorizing the calling of the International American Conference, which assembled in Washington in the autumn of 1889. On April 18, 1890, referring to this plan of arbitration, Mr. Blaine said:

> If, in this closing hour, the Conference had but one deed to celebrate, we should dare call the world's attention to the deliberate, confident, solemn dedication of two great continents to peace, and to the prosperity which has peace for its foundation. We hold up this new *Magna Charta,* which abolishes war and substitutes arbitration between the American republics, as the first and great fruit of the "International American Conference."

The Senate of the United States on February 14, 1890, and the House of Representatives on April 3, 1890, adopted a concurrent resolution in the language reported by Mr. Sherman to the Senate in June, 1888.

July 8, 1895, the French Chamber of Deputies unanimously resolved:

> The Chamber invites the Government to negotiate as soon as possible a permanent treaty of arbitration between the French Republic and the Republic of the United States of America.

July 16, 1893, the British House of Commons adopted the following resolution:

> *Resolved,* That this House has learnt with satisfaction that both Houses of the United States Congress have, by resolution, requested the President to invite, from time to time, as fit occasions may arise, negotiations with any government with which the United States have or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency may be referred to arbitration and peaceably adjusted by such means; and that this House, cordially sympathizing with the purpose in view, expresses the hope that Her Majesty's Government will lend their ready coöperation to the Government of the United States upon the basis of the foregoing resolution.

December 4, 1893, President Cleveland referred to the foregoing resolution of the British House of Commons as follows:

> It affords me signal pleasure to lay this parliamentary resolution before the Congress and to express my sincere gratification that the sentiment of two great and kindred nations is thus authoritatively manifested in favor of the rational and peaceable settlement of international quarrels by honorable resort to arbitration.

These resolutions led to the exchange of communications regarding the conclusion of a permanent treaty of arbitration, suspended from the spring of 1895 to March 5, 1898, when negotiations were resumed which resulted in the signature of a treaty January 11, 1897, between the United States and Great Britain.

In his inaugural address, March 4, 1897, President McKinley said:

> Arbitration is the true method of settlement of international as well as local or individual differences. It was recognized as the best means of adjustment of differences between employers and employees by the Forty-ninth Congress in 1886, and its application was extended to our diplomatic relations by the unanimous concurrence of the Senate and House of the Fifty-first Congress in 1890. The latter resolution was accepted as the

basis of negotiations with us by the British House of Commons in 1893, and upon our invitation a treaty of arbitration between the United States and Great Britain was signed at Washington and transmitted to the Senate for ratification in January last.

Since this treaty is clearly the result of our own initiative, since it has been recognized as the leading feature of our foreign policy throughout our entire national history—the adjustment of difficulties by judicial methods rather than force of arms—and since it presents to the world the glorious example of reason and peace, not passion and war, controlling the relations between two of the greatest nations of the world, an example certain to be followed by others, I respectfully urge the early action of the Senate thereon, not merely as a matter of policy, but as a duty to mankind. The importance and moral influence of the ratification of such a treaty can hardly be overestimated in the cause of advancing civilization. It may well engage the best thought of the statesmen and people of every country, and I can not but consider it fortunate that it was reserved to the United States to have the leadership in so grand a work.

The Senate of the United States declined to concur in the ratification of the treaty of arbitration with Great Britain, but for reasons which might not affect a general treaty directed toward a similar end.

The publication by this Government of the exhaustive *History and Digest of the International Arbitrations to which the United States has been a Party,* by the Hon. John Bassett Moore, late Assistant Secretary of State, a work extending through six volumes, marks a new epoch in the history of arbitration. It places beyond controversy the applicability of judicial methods to a large variety of international disagreements which have been successfully adjudicated by individual arbitrators or temporary boards of arbitration chosen by the litigants for each case. It also furnishes an exceedingly valuable body of rules of organization and procedure for the guidance of future tribunals of a similar nature. But, perhaps, its highest significance is the demonstration of the superiority of a permanent tribunal over merely special and temporary boards of arbitration, with respect to economy of time and money as well as uniformity of method and procedure.

A history of the various plans for the realization of international justice shows the gradual evolution of clearer and less objectionable conceptions upon this subject. Those of Bluntschli, Lorimer, David Dudley Field, and Leone Levi have been long before the public, each containing useful suggestions, but impracticable as a whole. Certain

rules for the regulation of the procedure of international tribunals of arbitration were discussed by the Institute of International Law at its sessions at Geneva in 1874 and at The Hague in 1875, and provisional rules were finally approved. Another set of rules was proposed by a select committee of lawyers at the Universal Peace Congress, held in Chicago in 1893. Resolutions of a somewhat elaborate nature were adopted by the Interparliamentary Conference, composed of British and French members of Parliament, at Brussels in 1895. In April, 1896, the Bar Association of the State of New York, at a special meeting held at Albany, adopted a plan for the establishment of a permanent international tribunal. The almost continuous movement of thought in this direction since 1832 has been interrupted only by the late Spanish-American war.

A careful review of all the plans for an international tribunal that have thus far been proposed makes it evident that they have failed from two causes: (1) Too great elaboration and complication, involving too many debatable questions; and (2) the absence of an opportune occasion for proposing them to an authoritative international body.

The plan that is to prove successful, if a sufficient number of sovereign States be disposed to adopt any plan whatsoever for an international tribunal, must combine an adequate grasp of the conditions with an extreme simplicity, leaving much to the coöperation of others and the development of the future.

The introduction of a brief resolution at an opportune moment in the proposed Peace Conference would at least place the United States on record as the friend and promoter of peace. The resolution hereto appended[1] is intended to embody in the briefest and simplest manner the most useful suggestions of all the plans proposed.

[*Annex B*]

PLAN FOR AN INTERNATIONAL TRIBUNAL

Resolved, That in order to aid in the prevention of armed conflicts by pacific means, the representatives of the sovereign Powers assembled together in this Conference be, and hereby are, requested to propose to their respective Governments a series of negotiations for the adoption of a general treaty having for its object the following

[1]Annex B, *infra.*

plan, with such modifications as may be essential to secure the adhesion of at least nine sovereign Powers.

1. The tribunal shall be composed of judges chosen on account of their personal integrity and learning in international law by a majority of the members of the highest court now existing in each of the adhering States, one from each sovereign State participating in the treaty, and shall hold office until their successors are appointed by the same body.

2. The tribunal shall meet for organization at a time and place to be agreed upon by the several Governments, but not later than six months after the general treaty shall be ratified by nine Powers, and shall organize itself by the appointment of a permanent clerk and such other officers as may be found necessary, but without conferring any distinction upon its own members. The tribunal shall be empowered to fix its place of sessions and to change the same from time to time as the interests of justice or the convenience of the litigants may seem to require, and fix its own rules of procedure.

3. The contracting nations will mutually agree to submit to the international tribunal all questions of disagreement between them, excepting such as may relate to or involve their political independence or territorial integrity. Questions of disagreement, with the aforesaid exceptions, arising between an adherent State and a non-adhering State, or between two sovereign States not adherent to the treaty, may, with the consent of both parties in dispute, be submitted to the international tribunal for adjudication, upon the condition expressed in Article 6.

4. The tribunal shall be of a permanent character and shall be always open for the filing of cases and counter-cases, either by the contracting nations or by others that may choose to submit them, and all cases and counter-cases, with the testimony and arguments by which they are to be supported or answered, are to be in writing. All cases, counter-cases, evidence, arguments, and opinions expressing judgment are to be accessible, after a decision is rendered, to all who desire to pay the necessary charges for transcription.

5. A bench of judges for each particular case shall consist of not less than three nor more than seven, as may be deemed expedient, appointed by the unanimous consent of the tribunal, and not to include a member who is either a native, subject, or citizen of the State whose interests are in litigation in that case.

6. The general expenses of the tribunal are to be divided equally between the adherent Powers, but those arising from each particular case shall be provided for as may be directed by the tribunal. The presentation of a case wherein one or both of the parties may be a non-adherent State shall be admitted only upon condition of a mutual agreement that the State against which judgment may be found shall pay, in addition to the judgment, a sum to be fixed by the tribunal for the expenses of the adjudication.

7. Every litigant before the international tribunal shall have the right to make an appeal for reëxamination of a case within three months after notification of the decision, upon presentation of evidence that the judgment contains a substantial error of fact or law.

8. This treaty shall become operative when nine sovereign States, whereof at least six shall have taken part in the Conference of The Hague, shall have ratified its provisions.

REPORT TO THE SECRETARY OF STATE OF THE DELEGATES TO THE FIRST HAGUE CONFERENCE[1]

THE HAGUE, *July 31, 1899.*

THE HONORABLE JOHN HAY,
Secretary of State.

SIR: On May 17, 1899, the American Commission to the Peace Conference of The Hague met for the first time at the house of the American Minister, the Honorable Stanford Newel, the members, in the order named in the instructions from the State Department being Andrew D. White, Seth Low, Stanford Newel, Captain Alfred T. Mahan of the United States Navy, Captain William Crozier of the United States Army, and Frederick W. Holls, secretary. Mr. White was elected president, and the instructions from the Department of State were read.

On the following day the Conference was opened at the palace known as "The House in the Wood," and delegates from the following countries, twenty-six in number, were found to be present: Germany, the United States of America, Austria-Hungary, Belgium, China, Denmark, Spain, France, Great Britain and Ireland, Greece, Italy, Japan, Luxemburg, Mexico, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden and Norway, Switzerland, Turkey, and Bulgaria.

The opening meeting was occupied mainly by proceedings of a ceremonial nature, including a telegram to the Emperor of Russia, and a message of thanks to the Queen of the Netherlands, with speeches by Mr. de Beaufort, the Netherlands Minister of Foreign Affairs, and Mr. de Staal, representing Russia.

At the second meeting a permanent organization of the Conference was effected, Mr. de Staal being chosen president, Mr. de Beaufort honorary president, and Mr. van Karnebeek, a former Netherlands

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[1] *Foreign Relations of the United States,* 1899, p. 513; Holls, *op. cit.,* p. 477; Scott, *op. cit.,* vol. ii, p. 17. The general report here printed is followed by separate reports of different delegates on particular subjects.

Minister of Foreign Affairs, vice-president. A sufficient number of secretaries was also named.

The work of the Conference was next laid out with reference to the points stated in the Mouravieff circular of December 30, 1898, and divided between three great committees as follows:

The first of these committees was upon the limitation of armaments and war budgets, the interdiction or discouragement of sundry arms and explosives which had been or might be hereafter invented, and the limitation of the use of sundry explosives, projectiles, and methods of destruction, both on land and sea, as contained in Articles 1 to 4 of the Mouravieff circular.

The second great committee had reference to the extension of the Geneva Red Cross rules of 1864 and 1868 to maritime warfare, and the revision of the Brussels Declaration of 1874 concerning the laws and customs of war, as contained in Articles 5 to 7 of the same circular.

The third committee had as its subjects, mediation, arbitration, and other methods of preventing armed conflicts between nations, as referred to in Article 8 of the Mouravieff circular.

The American members of these three committees were as follows: of the first committee, Messrs. White, Mahan, Crozier; of the second committee, Messrs. White, Newel, Mahan, Crozier; of the third committee, Messrs. White, Low and Holls.

In aid of these three main committees subcommittees were appointed as follows:

The first committee referred questions of a military nature to the first subcommittee, of which Captain Crozier was a member, and questions of a naval nature to the second subcommittee, of which Captain Mahan was a member.

The second committee referred Articles 5 and 6, having reference to the extension of the Geneva rules to maritime warfare, to a subcommittee of which Captain Mahan was a member, and Article 7, concerning the revision of the laws and customs of war, to a subcommittee of which Captain Crozier was a member.

The third committee appointed a single subcommittee of "examination," whose purpose was to scrutinize plans, projects, and suggestions of arbitration, and of this committee Mr. Holls was a member.

The main steps in the progress of the work wrought by these agencies, and the part taken in it by our commission are detailed in the

accompanying reports, made to the American commission by the American members of the three committees of the Conference. It will be seen from these that some of the most important features finally adopted were the result of American proposals and suggestions.

As to that portion of the work of the first committee of the Conference which concerned the non-augmentation of armies, navies, and war budgets for a fixed term, and the study of the means for eventually diminishing armies and war budgets, namely, Article 1, the circumstances of the United States being so different from those which obtain in other parts of the world, and especially in Europe, we thought it best, under our instructions, to abstain from taking any active part. In this connection the following declaration was made:

> The delegation of the United States of America has concurred in the conclusions upon the first clause of the Russian letter of December 30, 1898, presented to the Conference by the first commission, namely, that the proposals of the Russian representatives for fixing the amounts of effective forces and of budgets, military and naval, for periods of five and three years, can not now be accepted, and that a more profound study upon the part of each State concerned is to be desired. But, while thus supporting what seemed to be the only practicable solution of a question submitted to the Conference by the Russian letter, the delegation wishes to place upon the record that the United States, in so doing, does not express any opinion as to the course to be taken by the States of Europe.
>
> This declaration is not meant to indicate mere indifference to a difficult problem, because it does not affect the United States immediately, but expresses a determination to refrain from enunciating opinions upon matters into which, as concerning Europe alone, the United States has no claim to enter. The words drawn up by M. Bourgeois, and adopted by the first commission, received also the hearty concurrence of this delegation, because in so doing it expresses the cordial interest and sympathy with which the United States, while carefully abstaining from anything that might resemble interference, regards all movements that are thought to tend to the welfare of Europe. The military and naval armaments of the United States are at present so small, relatively to the extent of territory and to the number of the population, as well as in comparison with those of other nations, that their size can entail no additional burden of expense upon the latter, nor can even form a subject for profitable mutual discussion.

As to that portion of the work of the first committee which concerned the limitations of invention and the interdiction of sundry arms, explosives, mechanical agencies, and methods heretofore in use or which might possibly be hereafter adopted, as regards warfare by land and sea, namely, Articles 2, 3, and 4, the whole matter having been divided between Captains Mahan and Crozier so far as technical discussion was concerned, the reports made by them from time to time to the American commission formed the basis of its final action on these subjects in the first committee and in the Conference at large.

The American commission approached the subject of the limitation of invention with much doubt. They had been justly reminded in their instructions of the fact that by the progress of invention, as applied to the agencies of war, the frequency, and, indeed, the exhausting character of war had been, as a rule, diminished rather than increased. As to details regarding missiles and methods, technical and other difficulties arose which obliged us eventually, as will be seen, to put ourselves on record in opposition to the large majority of our colleagues from other nations on sundry points. While agreeing with them most earnestly as to the end to be attained, the difference in regard to some details was irreconcilable. We feared falling into evils worse than those from which we sought to escape. The annexed reports of Captains Mahan and Crozier will exhibit very fully these difficulties and the decisions thence arising.

As to the work of the second great committee of the Conference, the matters concerned in Articles 3 and 6, which related to the extension to maritime warfare of the Red Cross rules regarding care for the wounded adopted in the Geneva Conventions of 1864 and 1868, were, as already stated, referred, as regards the discussion of technical questions in the committee and subcommittee, to Captain Mahan, and the matters concerned in Article 7, on the revision of the laws and customs of war, were referred to Captain Crozier. On these technical questions Captains Mahan and Crozier reported from time to time to the American commission, and these reports, having been discussed both in regard to their general and special bearings, became the basis of the final action of the entire American commission, both in the second committee and in the Conference at large.

As to the first of these subjects, the extension of the Geneva Red Cross rules to maritime warfare, while the general purpose of the articles adopted elicited the especial sympathy of the American com-

mission, a neglect of what seemed to us a question of almost vital importance, namely, the determination of the status of men picked up by the hospital ships of neutral States or by other neutral vessels, has led us to refrain from signing the convention prepared by the Conference touching this subject, and to submit the matter with full explanation to the Department of State for decision.

As to the second of these subjects, the revision of the laws and customs of war, though the code adopted and embodied in the third convention commends our approval, it is of such extent and importance as to appear to need detailed consideration in connection with similar laws and customs already in force in the Army of the United States, and it was thought best therefore to withhold our signature from this convention also and to refer it to the State Department with a recommendation that it be there submitted to the proper authorities for special examination and signed, unless such examination shall disclose imperfections not apparent to the commission.

As to the third great committee of the Conference, that which had in charge the matters concerned in Article 3 of the Russian circular with reference to good offices, mediation, and arbitration, the proceedings of the subcommittee above referred to became especially important.

While much interest was shown in the discussions of the first of the great committees of the Conference, and still more in those of the second, the main interest of the whole body centered more and more in the third. It was felt that a thorough provision for arbitration and its cognate subjects is the logical precursor of the limitation of standing armies and budgets, and that the true logical order is first arbitration and then disarmament.

As to subsidiary agencies, while our commission contributed much to the general work regarding good offices and mediation it contributed entirely, through Mr. Holls, the plan for "special mediation," which was adopted unanimously, first by the committee and finally by the Conference.

As to the plan for "international commissions of inquiry," which emanated from the Russian delegation, our commission acknowledged its probable value and aided in elaborating it, but added to the safeguards against any possible abuse of it, as concerns the United States, by our declaration of July 25, to be mentioned hereafter.

The functions of such commission are strictly limited to the ascertainment of facts, and it is hoped that both by giving time for passions

to subside and by substituting truth for rumor, they may prove useful at times in settling international disputes. The commissions of inquiry may also form a useful auxiliary both in the exercise of good offices and to arbitration.

As to the next main subject, the most important of all under consideration by the third committee—the plan of a permanent court or tribunal—we were also able, in accordance with our instructions, to make contributions which we believe will aid in giving such a court dignity and efficiency.

On the assembling of the Conference the feeling regarding the establishment of an actual permanent tribunal was evidently chaotic, with little or no apparent tendency to crystallize into any satisfactory institution. The very elaborate and in the main excellent proposals relating to procedure before special and temporary tribunals, which were presented by the Russian delegation, did not at first contemplate the establishment of any such permanent institution. The American plan contained a carefully devised project for such a tribunal, which differed from that adopted mainly in contemplating a tribunal capable of meeting in full bench and permanent in the exercise of its functions, like the Supreme Court of the United States, instead of a court like the supreme court of the State of New York, which never sits as a whole, but whose members sit from time to time singly or in groups, as occasion may demand. The Court of Arbitration provided for resembles in many features the supreme court of the State of New York and courts of unlimited original jurisdiction in various other States.

In order to make this system effective a Council was established, composed of the diplomatic representatives of the various Powers at The Hague, and presided over by the Netherlands Minister of Foreign Affairs, which should have charge of the central office of the proposed Court, of all administrative details, and of the means and machinery for speedily calling a proper bench of judges together, and for setting the Court in action. The reasons for our coöperation in making this plan will be found in the accompanying report. This compromise, involving the creation of a council and the selection of judges not to be in session save when actually required for international litigation, was proposed by Great Britain, and the feature of it which provided for the admission of the Netherlands with its Minister of Foreign Affairs as President of the Council, was proposed by the

American commission. The nations generally joined in perfecting other details. It may truthfully be called, therefore, the plan of the Conference.

As to the revision of the decisions by the tribunal in case of the discovery of new facts, a subject on which our instructions were explicit, we were able, in the face of determined and prolonged opposition, to secure recognition in the code of procedure for the American view.

As regards the procedure to be adopted in the International Court thus provided, the main features having been proposed by the Russian delegation, various modifications were made by other delegations, including our own. Our commission was careful to see that in this code there should be nothing which could put those conversant more especially with British and American common law and equity at a disadvantage. To sundry important features proposed by other Powers our own commission gave hearty support. This was the case especially with Article 27 proposed by France. It provides a means, through the agency of the Powers generally, for calling the attention of any nations apparently drifting into war to the fact that the tribunal is ready to hear their contention. In this provision, broadly interpreted, we acquiesced, but endeavored to secure a clause limiting to suitable circumstances the "duty" imposed by the article. Great opposition being shown to such an amendment as unduly weakening the article, we decided to present a declaration that nothing contained in the convention should make it the duty of the United States to intrude in or become entangled with European political questions or matters of internal administration or to relinquish the traditional attitude of our nation toward purely American questions. This declaration was received without objection by the Conference in full and open session.

As to the results thus obtained as a whole regarding arbitration, in view of all the circumstances and considerations revealed during the sessions of the Conference, it is our opinion that the "Plan for the pacific settlement of international disputes," which was adopted by the Conference, is better than that presented by any one nation. We believe that, though it will doubtless be found imperfect and will require modification as times goes on, it will form a thoroughly practical beginning, it will produce valuable results from the outset, and it will be the germ out of which a better and better system will be gradually evolved.

As to the question between compulsory and voluntary arbitration

it was clearly seen before we had been long in session that general compulsory arbitration of questions really likely to produce war could not be obtained; in fact that not one of the nations represented at the Conference was willing to embark in it, so far as the more serious questions were concerned. Even as to the questions of less moment, it was found to be impossible to secure agreement except upon a voluntary basis. We ourselves felt obliged to insist upon the omission from the Russian list of proposed subjects for compulsory arbitration international conventions relating to rivers, to interoceanic canals, and to monetary matters. Even as so amended, the plan was not acceptable to all. As a consequence, the convention prepared by the Conference provides for voluntary arbitration only. It remains for public opinion to make this system effective. As questions arise threatening resort to arms it may well be hoped that public opinion in the nations concerned, seeing in this great international court a means of escape from the increasing horrors of war, will insist more and more that the questions at issue be referred to it. As time goes on such reference will probably more and more seem to the world at large natural and normal, and we may hope that recourse to the tribunal will finally, in the great majority of serious differences between nations, become a regular means of avoiding the resort to arms. There will also be another effect worthy of consideration. This is the building up of a body of international law growing out of the decisions handed down by the judges. The procedure of the tribunal requires that reasons for such decisions shall be given, and these decisions and reasons can hardly fail to form additions of especial value to international jurisprudence.

It now remains to report the proceedings of the Conference, as well as our own action, regarding the question of the immunity of private property not contraband from seizure on the seas in time of war. From the very beginning of our sessions it was constantly insisted by leading representatives from nearly all the great Powers that the action of the Conference should be strictly limited to the matters specified in the Russian circular of December 30, 1898, and referred to in the invitation emanating from the Netherlands Ministry of Foreign Affairs.

Many reasons for such a limitation were obvious. The members of the Conference were from the beginning deluged with books, pamphlets, circulars, newspapers, broadsides, and private letters on a multitude of burning questions in various parts of the world. Con-

siderable numbers of men and women devoted to urging these questions came to The Hague or gave notice of their coming.

It was very generally believed in the Conference that the admission of any question not strictly within the limits proposed by the two circulars above mentioned would open the door to all these proposals above referred to, and that this might lead to endless confusion, to heated debate, perhaps even to the wreck of the Conference and consequently to a long postponement of the objects which both those who summoned it and those who entered it had directly in view.

It was at first held by very many members of the Conference that under the proper application of the above rule the proposal (?) made by the American commission could not be received. It required much and earnest argument on our part to change this view, but finally the memorial from our commission, which stated fully the historical and actual relation of the United States to the whole subject, was received, referred to the appropriate committee, and finally brought by it before the Conference.

In that body it was listened to with close attention and the speech of the chairman of the committee, who is the eminent president of the Venezuelan arbitration tribunal now in session at Paris, paid a hearty tribute to the historical adhesion of the United States to the great principle concerned. He then moved that the subject be referred to a future Conference. This motion we accepted and seconded, taking occasion in doing so to restate the American doctrine on the subject, with its claims on all the nations represented at the Conference.

The commission was thus, as we believe, faithful to one of the oldest of American traditions, and was able at least to keep the subject before the world. The way it paved also for a future careful consideration of the subject in all its bearings and under more propitious circumstances.

The conclusion of the Peace Conference at The Hague took complete and definite shape in the Final Act laid before the delegates on July 29, for their signature. This act embodied three conventions, three declarations, and seven resolutions, as follows:

First. A Convention for the pacific settlement of international disputes. This was signed by sixteen delegations, as follows: Belgium, Denmark, Spain, United States of America, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, and Bulgaria. There were [sic] adjoined to the signatures of the United States delegation a reference

to our declaration above referred to, made in open Conference on July 25, and recorded in the proceedings of that day.

Second. A Convention concerning the laws and customs of war on land. This was signed by fifteen delegations, as follows: Belgium, Denmark, Spain, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, and Bulgaria.

The United States delegation refer the matter to the Government at Washington, with the recommendation that it be there signed.

Third. A Convention for the adaptation to maritime warfare of the principles of the Geneva Conference of 1864. This was signed by fifteen delegations, as follows: Belgium, Denmark, Spain, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, and Bulgaria.

The United States representatives refer it, without recommendation, to the Government at Washington.

The three Declarations were as follows:

First. A Declaration prohibiting the throwing of projectiles and explosives from balloons or by other new analogous means, such prohibition to be effective during five years. This was signed by seventeen delegations, as follows: Belgium, Denmark, Spain, the United States of America, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Turkey, and Bulgaria.

Second. A Declaration prohibiting the use of projectiles having as their sole object the diffusion of asphyxiating or deleterious gases. This, for reasons given in the accompanying documents, the American delegation did not sign. It was signed by sixteen delegations, as follows: Belgium, Denmark, Spain, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Turkey, and Bulgaria.

Third. A Declaration prohibiting the use of bullets which expand or flatten easily in the human body, as illustrated by certain given details of construction. This, for technical reasons also fully stated in the report, the American delegation did not sign. It was signed by fifteen delegations, as follows: Belgium, Denmark, Spain, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Roumania, Russia, Siam, Sweden and Norway, Turkey, and Bulgaria.

The seven resolutions were as follows:

First. A resolution that the limitation of the military charges which at present so oppress the world is greatly to be desired, for the increase of the material and moral welfare of mankind.

This ended the action of the Conference in relation to matters considered by it upon their merits. In addition the Conference passed the following resolutions, for all of which the United States delegation voted, referring various matters to the consideration of the Powers or to future conferences. Upon the last five resolutions a few Powers abstained from voting.

The second resolution was as follows: The Conference taking into consideration the preliminary steps taken by the Federal Government of Switzerland for the revision of the Convention of Geneva, expresses the wish that there should be in a short time a meeting of a special Conference having for its object the revision of that convention.

This resolution was voted unanimously.

Third. The Conference expresses the wish that the question of rights and duties of neutrals should be considered at another conference.

Fourth. The Conference expresses the wish that questions relative to muskets and marine artillery, such as have been examined by it, should be made the subject of study on the part of the Governments with a view of arriving at an agreement concerning the adoption of new types and calibers.

Fifth. The Conference expresses the wish that the Governments, taking into account all the propositions made at this Conference, should study the possibility of an agreement concerning the limitation of armed forces on land and sea and of war budgets.

Sixth. The Conference expresses the wish that a proposition having for its object the declaration of immunity of private property in war on the high seas should be referred for examination to another conference.

Seventh. The Conference expresses the wish that the proposition of regulating the question of bombardment of ports, cities, or villages by a naval force should be referred for examination to another conference.

It will be observed that the conditions upon which Powers not represented at the Conference can adhere to the Convention for the peaceful regulation of international conflicts is to "form the subject of a later agreement between the contracting Powers." This provision reflects the outcome of a three days' debate in the drafting com-

mittee as to whether this convention should be absolutely open, or open only with the consent of the contracting Powers. England and Italy strenuously supported the latter view. It soon became apparent that under the guise of general propositions, the committee was discussing political questions, of great importance at least to certain Powers. Under these circumstances the representatives of the United States took no part in the discussion, but supported by their vote the view that the convention, in its nature, involved reciprocal obligations; and also the conclusion that political questions had no place in the Conference, and must be left to be decided by the competent authorities of the Powers represented there.

It is to be regretted that this action excludes from immediate adherence to this convention our sister republics of Central and South America, with whom the United States is already in similar relations by the Pan American Treaty. It is hoped that an arrangement will soon be made which will enable these States, if they so desire, to enter into the same relations as ourselves with the Powers represented at the Conference.

This report should not be closed without an acknowledgment of the great and constant courtesy of the Government of the Netherlands and all its representatives to the American commission as well as to all the members of the Conference. In every way they have sought to aid us in our work and to make our stay agreeable to us. The accommodations they have provided for the Conference have enhanced its dignity and increased its efficiency.

It may also be well to put on record that from the entire Conference, without exception, we have constantly received marks of kindness, and that although so many nations with different interests were represented, there has not been in any session, whether of the Conference or of any of the committees or subcommittees, anything other than calm and courteous debate.

The text of the Final Act of the various conventions and declarations referred to therein, is appended to this report.[1]

All of which is most respectfully submitted:

ANDREW D. WHITE, *President,*
SETH LOW,
STANFORD NEWEL,
A. T. MAHAN,
WILLIAM CROZIER,
FREDERICK W. HOLLS, *Secretary.*

[1]Not printed.

REPORT OF CAPTAIN CROZIER TO THE AMERICAN DELEGATION TO THE FIRST HAGUE CONFERENCE, REGARDING THE WORK OF THE FIRST COMMITTEE OF THE CONFERENCE AND ITS SUBCOMMITTEE[1]

THE HAGUE, *July 31, 1899.*

The Commission of the United States of America to the International Conference at The Hague.

GENTLEMEN: I have the honor of submitting a *résumé* of the work of the first committee of the Conference and of its first subcommittee, which was the military subdivision, concerning the following subjects, which are mentioned in the second and third numbered articles of the circular of Count Mouravieff of December 30, 1898 (January 11, 1899), namely: powders, explosives, field guns, balloons, and muskets; also the subject of bullets which, although not mentioned in either of the above designated articles of Count Mouravieff's circular, were considered by this committee, notwithstanding that it would have appeared more logical to consider them under the seventh numbered article of the circular, referring to the declaration concerning the laws and customs of war made by the Brussels Conference in 1874.

The Russian representative on the first committee was Colonel Gilinsky, and the propositions for discussion were for the most part presented by him in the name of the Russian Government, and upon him generally devolved the duty of explaining the proposals and of supporting them in the first instance.

POWDERS

By this term was meant the propelling charge of projectiles, as distinguished from the bursting charge. The proposition presented was that which is contained in the second article of the circular, namely: an agreement not to make use of any more powerful powders than those now employed, both for field guns and muskets. There was little discussion on the proposition; in fact, the remarks of the United States delegate were the only ones made upon the subject, and the proposition was unanimously rejected.

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[1]Holls, *op. cit.*, p. 506; Scott, *op. cit.*, vol. ii., p. 29.

EXPLOSIVES

By this term was meant the bursting charges of projectiles. Two propositions were made. The first was not to make use of mining shells (*obus brisants ou a fougasses*) for field artillery. After a short discussion the proposition was decided in the negative by a vote of eleven to ten. The second proposition was not to make use of any new explosives, or of any of the class known as high explosives for the bursting charges of projectiles. This proposition was also, after a short discussion, lost by a vote of twelve to nine.

FIELD GUNS

The proposition on this subject was for the Powers to agree that no field material should be adopted of a model superior to the best material now in use in any country—those countries having inferior material to the best now in use to have the privilege of adopting such best material. During the discussion, which was extended to some length, the question divided itself into two parts, and two votes were taken upon it. The first was as to whether, in case improvements in field artillery should be forbidden, this interdiction should nevertheless permit everybody to adopt the most perfect material now in use anywhere. The vote upon this question was so accompanied by reservations and explanations, that it was impossible to state what the result of it was—the only thing evident being that the question was not entirely understood by the voting delegates. Consequently, a second vote was taken upon the question whether the Powers should agree not to make use, for a fixed period, of any new invention in field artillery. This question was decided in the negative by a unanimous vote, with the exception of Russia and Bulgaria, which abstained from voting. The Russian delegate, at a later period, explained that his abstention was due to the fact that the question had taken such a form that its decision in the affirmative would have prevented the adoption of rapid fire field guns, which, in the view that these were of an existing type, he desired to retain for his Government the privilege of adopting.

BALLOONS

The subcommittee first voted a perpetual prohibition of the use of balloons or similar new machines for throwing projectiles or ex-

plosives. In the full committee, this subject was brought up for reconsideration by the United States delegate and the prohibition was, by unanimous vote, limited to cover a period of five years only. The action taken was for humanitarian reasons alone, and was founded upon the opinion that balloons, as they now exist, form such an uncertain means of injury that they can not be used with any accuracy; that the persons or objects injured by throwing explosives from them may be entirely disconnected from any conflict which may be in process, and such that their injury or destruction would be of no practical advantage to the party making use of the machines. The limitation of the interdiction of five years' operation preserves liberty of action under changed circumstances which may be produced by the progress of invention.

MUSKETS

The proposition presented under this head was that no Power should change their existing type of small arm. It will be observed that this proposition differed from that in regard to field guns, which permitted all Powers to adopt the most perfect material now in existence—the reason for the difference being explained by the Russian delegate to be that, whereas there was a great difference in the excellence of field artillery material in use in different countries, they have all adopted substantially the same musket, and being on an equal footing, the present would be a good time to cease making changes. The object of the proposition was stated to be purely economic. It was explained that the prohibition to adopt a new type of musket would not be intended to prevent the improvement of existing types; whereupon there immediately arose a discussion as to what constituted a type and what improvements might be made without falling under the prohibition of not changing it. Efforts were made to effect a concord of views by specifying details, such as initial velocity, weight of projectiles, etc., also by the proposition to limit the time for which the prohibition should hold, but no agreement could be secured. The United States delegate stated early in the discussion, on the attitude of the United States toward questions of this class, that our Government did not consider limitations in regard to the use of military inventions to be conducive to the peace of the world, and for that reason such limitation would in general not be supported by the American commission.

A separate vote was taken upon the question whether the Powers

should agree not to make use of automatic muskets, and as this may be taken as a fair example of the class of improvements which, although they may have reached such a stage as to be fairly before the world, have not yet been adopted by any nation, an analysis of the vote taken upon it may be interesting as showing the attitude of the different Powers in regard to such questions. The States voting in favor of the prohibition were Belgium, Denmark, Spain, Holland, Persia, Russia, Siam, Switzerland, and Bulgaria (nine). Those voting against it were Germany, the United States, Austria-Hungary, Great Britain, Italy, Sweden and Norway (six). And those abstaining were France, Japan, Portugal, Roumania, Servia, and Turkey (six). From this statement it may be seen that none of the great Powers of the world, except Russia, was willing to accept restrictions in regard to military improvements when the question of increase of efficiency was involved, and that one great Power (France) abstained from expressing an opinion upon the subject.

In the full committee, after another effort to secure some action in the line of the proposition had failed, it was agreed that the subject should be regarded as open for future consideration of the different Governments.

A question was also raised as to whether there should be any agreement in regard to the use of new means of destruction, which might possibly have a tendency to come into vogue, such as those depending upon electricity or chemistry. After a short discussion, in which the Russian representative declared his Government to be in favor of prohibiting the use of all such new instrumentalities because of their view that the means of destruction at present employed were quite sufficient, the question was also put aside as one for future consideration on the part of the different Powers.

The United States representative made no objection to these questions being considered as remaining open upon the general ground of not offering opposition to desired freedom of discussion, the attitude of the United States in regard to them having, however, been made known by his statement already given.

BULLETS

This subject gave rise to more active debate and to more differences of view than any other considered by the subcommittee. A formula was adopted as follows:

> The use of bullets which expand or flatten easily in the human body, such as jacketed bullets of which the jacket does not entirely cover the core or has incisions in it, should be forbidden.

When this subject came up in the full committee the British representative, Major-General Sir John Ardagh, made a declaration of the position of his Government on the subject, in which he described their dumdum bullet as one having a very small portion of the jacket removed from the point, so as to leave uncovered a portion of the core of about the size of a pin-head. He said that this bullet did not expand in such manner as to produce wounds of exceptional cruelty, but that on the contrary the wounds produced by it were in general less severe than those produced by the Snider, Martini-Henry, and other rifles of the period immediately preceding that of the adoption of the present small bore. He ascribed the bad reputation of the dumdum bullet to some experiments made at Tübingen in Germany with a bullet from the forward part of which the jacket, to a distance of more than a diameter, was removed. The wounds produced by this bullet were of a frightful character, and the bullets being generally supposed to be similar to the dumdum in construction had probably given rise to the unfounded prejudice against the latter.

The United States representative here for the first time took part in the discussion, advocating the abandonment of the attempt to cover the principle of prohibition of bullets producing unnecessarily cruel wounds by the specification of details of construction of the bullet, and proposing the following formula:

> The use of bullets which inflict wounds of useless cruelty, such as explosive bullets and in general every kind of bullet which exceeds the limit necessary for placing a man immediately *hors de combat,* should be forbidden.

The committee, however, adhered to the original proposition, which it voted without acting on the substitute submitted.

The action of the committee having left in an unsatisfactory state the record, which thus stated that the United States had pronounced against a proposition of humanitarian intent, without indicating that our Government not only stood ready to support but also proposed by its representatives a formula which was believed to meet the requirements of humanity much better than the one adopted by the committee,

the United States delegate, with the approval of the commission and in its name, proposed to the Conference at its next full session the above-mentioned formula as an amendment to the one submitted to the Conference by the first committee. In presenting the amendment he stated the objections to the committee's proposition to be the following: First, that it forbade the use of expanding bullets, notwithstanding the possibility that they might be made to expand in such regular manner as to assume simply the form of a larger caliber, which property it might be necessary to take advantage of, if it should in the future be found desirable to adopt a musket of very much smaller caliber than any now actually in use. Second, that by thus prohibiting what might be the most humane method of increasing the shocking power of a bullet and limiting the prohibition to expanding and flattening bullets, it might lead to the adoption of one of much more cruel character than that prohibited. Third, that it condemned by designed implication, without even the introduction of any evidence against it, the use of a bullet actually employed by the army of a civilized nation.

I was careful not to defend this bullet, of which I stated I had no knowledge other than that derived from the representations of the delegate of the Power using it, and also to state that the United States had no intention of using any bullet of the prohibited class, being entirely satisfied with the one now employed, which is of the same class as those in common use.

The original proposition was, however, maintained by the Conference—the only negative votes being those of Great Britain and the United States. It may be stated that in taking the vote it was decided to vote first upon the proposition as it came from the committee, instead of upon the amendment, notwithstanding the strong opposition of the United States and other Powers to this method of procedure as being contrary to ordinary parliamentary usage and preventing an expression of opinion upon the amendment submitted in the name of the United States commission.

From this report results the advice that, of the two declarations of the Conference originating in the first subcommittee of the first committee, viz: that concerning the use of balloons and that concerning the use of expanding or flattening bullets, the first only be signed by the United States commission.

The reports of General den Beer Portugael of the work of the subcommittee, and of M. van Karnebeek of that of the full first

committee, are hereto annexed and marked respectively "A" and "B."

I am, gentlemen,

Very respectfully, your obedient servant,

WILLIAM CROZIER,
Captain of Ordnance, U. S. A.,
Commissioner.

REPORT OF CAPTAIN MAHAN TO THE AMERICAN DELEGATION TO THE FIRST HAGUE CONFERENCE, ON DISARMAMENT, ETC., WITH REFERENCE TO NAVIES[1]

THE HAGUE, *July 31, 1899.*

To the Commission of the United States of America to the International Conference at The Hague.

GENTLEMEN: I beg to make the following report concerning the deliberations and conclusions of the Peace Conference on the questions of disarmament, and the limitations to be placed upon the development of the weapons of war, so far as navies are concerned.

Three questions were embraced in the first four articles of the Russian Letter of December 30, 1898, and were by the Conference referred to a committee, known as the first committee. The latter was divided into two subcommittees, which dealt with Articles 2, 3 and 4, as they touched on naval or military subjects, respectively. The general drift of these three articles was to suggest limitations, present and prospective, upon the development of the material of war, either by increase of power, and of consequent destructive effect, in weapons now existing, or by new inventions. Article 1, which proposed to place limits upon the augmentation of numbers in the personnel of armed forces, and upon increase of expenditure in the budgets, was reserved for the subsequent consideration of the full committee.

As regards the development of material, in the direction of power to inflict injury, there was unanimous assent to the proposition that injury should not be in excess of that clearly required to produce decisive results; but in the attempt to specify limitations in detail, insurmountable obstacles were encountered. This was due, partly to an apparent failure, beforehand, to give to the problem submitted

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[1] Holls, *op. cit.*, p. 493; Scott, *op. cit.*, vol. ii, p. 36.

that *"étude préalable technique,"* a wish for which, expressed by the Conference to the Governments represented, was almost the only tangible result of the deliberations.

Three propositions were, however, adopted: one, unanimously, forbidding, during a term of five years, the throwing of projectiles, or explosives, from balloons, or by other analogous methods. Of the two others, one, forbidding the use of projectiles the sole purpose of which was, on bursting, to spread asphyxiating or deleterious gases, was discussed mainly in the naval subcommittee. It received in that, and afterward in the fully committee, the negative vote of the United States naval delegate alone, although of the affirmative votes several were given subject to unanimity of acceptance. In the final reference to the Conference, in full session, of the question of recommending the adoption of such a prohibition, the delegation of Great Britain voted "No," as did that of the United States.

As a certain disposition has been observed to attach odium to the view adopted by this commission in this matter, it seems proper to state, fully and explicitly, for the information of the Government, that on the first occasion of the subject arising in subcommittee, and subsequently at various times in full committee, and before the Conference, the United States naval delegate did not cast his vote silently, but gave the reasons, which at his demand were inserted in the reports of the day's proceedings. These reasons were, briefly: 1. That no shell emitting such gases is as yet in practical use, or has undergone adequate experiment; consequently, a vote taken now would be taken in ignorance of the facts as to whether the results would be of a decisive character, or whether injury in excess of that necessary to attain the end of warfare, the immediate disabling of the enemy, would be inflicted. 2. That the reproach of cruelty and perfidy, addressed against these supposed shells, was equally uttered formerly against firearms and torpedoes, both of which are now employed without scruple. Until we knew the effects of such asphyxiating shells, there was no saying whether they would be more or less merciful than missiles now permitted. 3. That it was illogical, and not demonstrably humane, to be tender about asphyxiating men with gas, when all were prepared to admit that it was allowable to blow the bottom out of an ironclad at midnight, throwing four or five hundred men into the sea, to be choked by water, with scarcely the remotest chance of escape. If, and when, a shell emitting asphyxiating

gases alone has been successfully produced, then, and not before, men will be able to vote intelligently on the subject.

The question of limiting armaments and budgets, military and naval, likewise resulted in failure to reach an agreement, owing to the extensive and complicated considerations involved. A general wish was emitted that the subject in its various relations might in the future receive an attentive study on the part of the various Governments; and there was adopted without dissent a resolution proposed in the first committee, in full session, by M. Bourgeois, the first delegate of France, as follows:

> The committee consider that the limitation of the military expenditures which now weigh upon the world is greatly to be desired, for the increase of the moral and material welfare of humanity.

This sentiment received the assent of the Conference also.

The military and naval delegates of the United States commission bore a part in all the proceedings in sub- and full committee; but, while joining freely in the discussion of questions relating to the development of material, reserve was maintained in treating the subject of disarmament and of limitation of budgets, as being more properly of European concern alone. To avoid the possibility of misapprehension of the position of the United States on this matter, the following statement, drawn up by the Commission, was read at the final meeting of the first committee, July 17, when the report to be presented to the Conference was under consideration:

> The delegation of the United States of America have concurred in the conclusions upon the first clause of the Russian Letter of December 30, 1898, presented to the Conference by the first commission, namely: that the proposals of the Russian representatives, for fixing the amounts of effective forces and of budgets, military and naval, for periods of five and three years, can not now be accepted, and that a more profound study on the part of each State concerned is to be desired. But, while thus supporting what seemed to be the only practicable solution of a question submitted to the Conference by the Russian Letter, the delegation wishes to place upon the record that the United States, in so doing, does not express any opinion as to the course to be taken by the States of Europe.
>
> This declaration is not meant to indicate mere indifference to

a difficult problem because it does not affect the United States immediately, but expresses a determination to refrain from enunciating opinions upon matters into which, as concerning Europe alone, the United States has no claim to enter. The words drawn up by M. Bourgeois, and adopted by the first commission, received also the hearty concurrence of this delegation because in so doing, it expresses the cordial interest and sympathy with which the United States, while carefully abstaining from anything that might resemble interference, regards all movements that are thought to tend to the welfare of Europe. The military and naval armaments of the United States are at present so small, relatively, to the extent of territory and to the number of population, as well as in comparison with those of other nations, that their size can entail no additional burden of expense upon the latter, nor can even form a subject for profitable mutual discussion.

I have the honor to be
Your obedient servant,

A. T. MAHAN,
Captain U. S. Navy and Delegate.

REPORT OF CAPTAIN MAHAN TO THE AMERICAN DELEGATION TO THE FIRST HAGUE CONFERENCE, REGARDING THE WORK OF THE SECOND COMMITTEE OF THE CONFERENCE[1]

THE HAGUE, *July 31, 1899.*

To the Commission of the United States of America to the International Conference at The Hague.

GENTLEMEN: I have the honor to submit to the commission the following report, which I believe to be in sufficient detail, of the general proceedings, and of the conclusions reached by the second committee of the Conference, in relation to Articles 5 and 6 of the Russian circular letter of December 30, 1898.

In the original distribution of labor of the Conference, Articles 5, 6, and 7, of the said letter, were attributed to the second committee. The latter was divided into two subcommittees, to one of which was assigned the Articles 5 and 6, as both related to naval matters. Of this subcommittee I was a member, and it has fallen to me especially,

[1]Holls, *op. cit.*, p. 497; Scott, *op. cit.*, vol. ii, p. 39.

among the United States delegates, to follow the fortunes of the two articles named in their progress through the subcommittee, and through the full committee; but not through the smaller special committee, the *comité de redaction,* to which the subcommittee intrusted the formulation of its views. Of that *comité de redaction* I was not a member.

These two articles are as follows:

> 5. Adaptation to naval wars of the stipulations of the Geneva Convention of 1864, on the base of the additional articles of 1868.
>
> 6. Neutralization, for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles.

The general desirability of giving to hospital vessels the utmost immunity, consistent with the vigorous prosecution of war, was generally conceded, and met, in fact, with no opposition; but it was justly remarked at the outset that measures must be taken to put under efficient control of the belligerents all hospital ships fitted out by private benevolence, or by neutrals, whether associations or individuals. It is evident that unless such control is explicitly affirmed, and unless the various cases that may arise, in which it may be needed, are, as far as possible, foreseen and provided for, incidents may well occur which will bring into inevitable discredit the whole system of neutral vessels, hospital or others, devoted to the benevolent assistance of the sufferers in war.

The first suggestion, offered almost immediately, was that the simplest method of avoiding such inconvenience would be for the said neutral vessels, being engaged in service identical with that of belligerent hospital vessels to which it was proposed to extend the utmost possible immunity, should frankly enter the belligerent service by hoisting the flag of the belligerent to which it offered its services. This being permitted by general consent, and for purposes purely humanitarian, would constitute no breach of neutrality, while the control of either belligerent, when in presence, could be exercised without raising those vexed questions of neutral rights which the experience of maritime warfare shows to be among the most difficult and delicate problems that belligerents have to encounter.

This proposition was supported by me, as being the surest mode of avoiding difficulties easy to be foreseen, and which in my judgment

are wholly unprovided for by the articles adopted by the Conference. The neutral ship is, by common consent, permitted to identify itself with the belligerent and his operations for certain laudable purposes: why not for the time assume the belligerent's flag? The reasoning of the opposition was that such vessels should be considered in the same light as national vessels, and that to require them to hoist a foreign flag would be derogatory (*porterait atteinte*) to the sovereignty of the State to which they belonged. This view prevailed.

The first three meetings of the subcommittee, May 25, 30, and June 1, were occupied in a general discussion of the additional articles of 1868, suggested by the Russian letter of December 30, 1898, as the basis of the adaptation to naval wars of the Geneva Convention of 1864. In this discussion was also embraced Article 6 of the Russian letter, relating to the neutralization of boats engaged in rescuing the shipwrecked (*naufragés*) that is, men overboard for any cause during, or after, naval battles.

At the close of the second meeting it was decided that the president of the subcommittee should appoint the *comité de redaction* before mentioned. As finally constituted, this *comité de redaction* contained a representative from Great Britain, from Germany, from Russia, and from France. At the close of its third session the subcommittee was adjourned to await the report of the *comité de redaction.* It again assembled and received the report of June 13; this being the fourth meeting of the subcommittee.

The *comité de redaction* embodied in ten articles the conclusions of the subcommittee. The articles were preceded by a lucid or comprehensive report, the work chiefly of M. Renault, the French member of the *comité de redaction.* This report embraces the reasoning upon which the adoption of the articles is supported. A copy of the report and of the articles (marked A) accompanies this letter.[1]

Upon receiving the report and the articles, I pointed out to one of the members of the *comité de redaction,* that no adequate provision was made to meet the case of men who by accident connected with a naval engagement, such, for instance, as the sinking of their ship, were picked up by a neutral vessel. The omission was one likely to occur to an American, old enough to remember the very concrete and pertinent instance of the British yacht *Deerhound* saving the men of the *Alabama,* including her captain, who were then held to be under

[1]Not printed.

the protection of the neutral flag. It requires no flight of imagination to realize that a hostile commander-in-chief, whom it has always been a chief object of naval warfare to capture, as well as other valuable officers, might thus escape the hands of a victor.

At the meeting of the subcommittee on June 16, I drew attention to this omission when the vote was reached on Article 6, which provides that neutral vessels of various classes, carrying sick, wounded, or shipwrecked (*naufragés*) belligerents, can not be captured for the mere fact of this transportation; but that they do remain exposed to capture for violation of neutrality which they may have committed. I had then—unaccountably now to myself—overlooked the fact that there was an equal lack of satisfactory provision in the case of the hospital ships under neutral flags, whose presence on a scene of naval warfare is contemplated and authorized by Article 3. It was agreed that I should appear before the *comité de redaction,* prior to their final revision of the report and articles. This I did; but after two hours, more or less, of discussion, I failed to obtain any modification in the report or the articles. When, therefore, on the 15th of June, the matter came before the full second commission, I contented myself—as the articles were voted only *ad referendum*—subject to the approval of the Governments—with registering our regret that no suitable provision of the kind advocated had been made.

The matter was yet to come before the full committee. Before it did so, I had recognized that the difficulty I had noted concerning neutral vessels other than hospital ships might arise equally as regards the latter, the presence of which was contemplated and authorized, whereas that of other neutral ships might very well be merely accidental. I accordingly drew up and submitted to the United States commission, three additional articles, preceding these with a brief summary of the conditions which might readily occasion the contingency against which I sought to provide. This paper (annexed and marked B[1]) having received the approval of the delegation, was read, and the articles submitted to the second committee in a full session, held June 20, immediately prior to the session of the Conference, at 4 p.m. the same day to ratify the work of the committee. The three additional articles were referred to the *comité de redaction* with instructions to report to the full committee. The ten articles were then reported to the Conference and passed without opposition, under

[1]Printed on p. 43.

the reserve that the articles submitted by the United States delegation were still to be considered.

Here matters rested for some time, owing, as I understand, to certain doubtful points arising in connection with the three proposed articles, which necessitated reference to home Governments by one or more of the delegations. Finally I was informed that not only was there no possibility of a favorable report, nor, consequently, of the three proposed articles passing, but also that, if pressed to a full discussion, there could scarcely fail to be developed such difference of opinion upon the construction of the ten articles already adopted as would imperil the unanimity with which they had before been received. This information was conveyed by me to the United States commission, and after full consideration I was by it instructed to withdraw the articles. This was accordingly done immediately by letter, on July 18, to Vice-Admiral Sir John Fisher, Chairman of the *comité de redaction,* and through him to the president of the second commission.

At the subsequent meeting of the full Conference, July 20, the withdrawal being communicated by the president of the second committee, it was explained that this commission, while accepting the ten articles, and withdrawing its own suggested additions, must be understood to do so, not because of any change of opinion as to the necessity of the latter, but in order to facilitate the conclusion of the labors of the Conference; that the commission were so seriously impressed with the defects of the ten articles, in the respects indicated, that it could sign them only with the most explicit understanding that the doubts expressed before the second committee would be fully conveyed to the United States Government, and the liberty of action of the latter wholly reserved, as to accepting the ten articles.

By this course the ten articles, which else might ultimately have failed of unanimous adoption, have been preserved intact, with several valuable stipulations embodied in them. But while there is much that is valuable, it seems necessary to point out to the commission that to the hospital ships under neutral flags, mentioned in Article 3, and to neutral vessels in certain employments, under Article 6, are conceded a status and immunities hitherto unknown. While this is the case, there is not, in my opinion, in the articles any clear and adequate provision to meet such cases as were meant to be met by the three articles proposed by the commission, and which are per-

fectly conceivable and possible. Upon reflection I am satisfied that no necessity exists for the authorization of hospital vessels under a neutral flag upon the scene of naval war, and that the adhesion of our Government to such a scheme may be withheld without injury to anyone. As regards Article 6, conceding immunities heretofore not allowed to neutral vessels—for the transport of belligerents has heretofore been a violation of neutrality, without reservation in favor of the sick and wounded—it appears to me objectionable and premature, unless accompanied by reservations in favor of the belligerent rights of capture and recapture. These articles fail to provide explicitly. For these reasons it is my personal opinion that Articles 3 and 6 should not be accepted by the Government of the United States. If the delegation concur in this view, I recommend that such opinion be expressed in the general report.

I have the honor to be

Your obedient servant,

A. T. MAHAN,
Captain U. S. Navy and Delegate.

PAPER READ BY CAPTAIN MAHAN BEFORE THE SECOND COMMITTEE OF THE PEACE CONFERENCE ON JUNE 20, 1899[1]

It is known to the members of the subcommittee, by which these articles were accepted, that I have heretofore stated that there was an important omission, which I desired to rectify in an additional article or articles. The omission was to provide against the case of a neutral vessel, such as is mentioned in Article 6, picking up *naufragés* on the scene of a naval battle, and carrying them away, either accidentally or intentionally. What, I asked, is the status of such *combattants naufragés?*

My attention being absorbed by the case of vessels under Article 6, it was not until last night that I noticed that there was equally an omission to provide for the status of *combattants naufragés,* picked up by hospital ships. In order that non-professional men, men not naval officers, may certainly comprehend this point, allow me to develop it. On a field of naval battle the ships are constantly in move-

[1]Holls, *op. cit.,* p. 504; Scott, *op. cit.,* vol. ii, p. 44.

ment; not merely the movement of a land battle, but a movement of progress, of translation from place to place more or less rapid. The scene is here one moment; a half-hour later it may be five miles distant. In such a battle it happens that a ship sinks; her crew become *naufragés,* the place of action shifts; it is no longer where these men are struggling for life; the light cruisers of their own side come to help, but they are not enough; the hospital ships with neutral flags come to help; neutral ships other than hospital also arrive; a certain number of *combattants naufragés* are saved on board neutral ships. To which belligerent do these men belong? It may happen that the neutral vessel, hospital or otherwise, has been with the fleet opposed to the sunken ship. After fulfilling her work of mercy, she naturally returns to that fleet. The *combattants naufragés* fall into the power of the enemy, although it is quite probable that the fleet to which they belong may have had the advantage.

I maintain that unless some provision is made to meet this difficulty, much recrimination will arise. A few private seamen, more or less, a few subofficers, may not matter, but it is possible that a distinguished general officer, or valuable officer of lower grade may be affected. This will tend to bring into discredit the whole system for hospital ships; but further, while hospital ships, being regularly commissioned by their own Government, may be supposed to act with perfect impartiality, such presupposition is not permissible in the case of vessels named in Article 6. Unless the status of *combattants naufragés* saved by them is defined, the grossest irregularities may be expected—the notoriety of which will fully repay the class of men who would perpetrate them.

As many cases may arise, all of which it is impossible to meet specifically, I propose the following additional articles based upon the single general principle that *combattants naufragés,* being *ipso facto* combatants *hors de combat,* are incapable of serving again during the war, unless recaptured or until duly exchanged:

Additional Articles Proposed by Captain Mahan

1. In the case of neutral vessels of any kind, hospital ships or others, being on the scene of a naval engagement, which may, as an act of humanity, save men in peril of drowning, from the results of the engagement, such neutral vessels shall not be considered as having violated their neutrality by that fact alone. They will, however, in so doing, act at their own risk and peril.

2. Men thus rescued shall not be considered under the cover of the neutral flag, in case a demand for their surrender is [made] by a ship of war of either belligerent. They are open thus to capture, or to recapture. If such demand is made, the men so rescued must be given up, and shall then have the same status as though they had not been under a neutral flag.

3. In case no such demand is made by a belligerent ship, the men so rescued, having been delivered from the consequences of the fight by neutral interposition, are to be considered *hors de combat,* not to serve for the rest of the war, unless duly exchanged. The Contracting Governments engage to prevent as far as possible such persons from serving until discharged.

REPORT OF CAPTAIN CROZIER TO THE AMERICAN DELEGATION TO THE FIRST HAGUE CONFERENCE, REGARDING THE WORK OF THE SECOND SUBCOMMITTEE OF THE SECOND COMMITTEE OF THE CONFERENCE[1]

THE HAGUE, *July 31, 1899.*

Commission of the United States of America to the International Conference at The Hague.

GENTLEMEN: I have the honor to submit a summary of the work appertaining in the first instance to the second subcommittee of the second committee of the Conference. This subcommittee was charged with the revision of the declaration concerning the laws and customs of war, prepared in 1784 by the Conference of Brussels, but never ratified. It is the subject indicated by article number seven of the circular of Count Mouravieff of December 30, 1898. Although the work of the Conference of Brussels was mentioned in this circular, previous publication of a code of what might be called the laws and customs of war had been made in General Order No. 100, issued from the Adjutant-General's Office of the United States Army in 1863, having been prepared by Dr. Francis Lieber of Columbia University. A graceful allusion to this publication and acknowledgment of its value was made by the chairman of the subcommittee, M. de Martens of Russia, at one of its sessions.

[1]Holls, *op. cit.,* p. 515; Scott, *op. cit.,* vol. ii, p. 46.

A code of the "laws and customs of war on land," comprising sixty articles, was elaborated by the subcommittee and by the Conference. This code, if accepted by the United States, would take the place of those portions of the present instructions for the government of its armies in the field which are covered by its sixty articles. It would not completely take the place of these instructions for the reason that certain subjects relating to hostilities are omitted therefrom, some because of their delicacy, such as retaliation, and reprisals, etc., others because they relate to the internal administration of an army and to the methods to be used to enforce observation of the code, as by penalties for violations. An important example of this class of omissions is found in Article 46 of the United States instructions (General Order 100) which forbids, under severe penalties, officers or soldiers from making use of their position or power in a hostile country for private commercial transactions even of such nature as would otherwise be legitimate. In regard to the omitted subjects the declaration is made that while awaiting the establishment of a more complete code of the laws of war, populations and combatants remain under the protection and exactions of the principles of the law of nations as it results from established usage, from the rules of humanity, and from the requirements of the public conscience.

The code in general presents that advance from the rules of General Order No. 100, in the direction of effort to spare the sufferings of the populations of invaded and occupied countries, to limit the acts of invaders to those required by military necessities, and to diminish what are ordinarily known as the evils of war, which might be expected from the progress of nearly forty years' thought upon the subject. It is divided into four sections and each of them into several chapters.

Section I, of three chapters, treats of the personnel of the belligerents.

Chapter I, Articles 1 to 30, prescribes what persons are legitimate combatants and has particular reference to *levée en masse*.

Article 2 represents the extreme concession to unorganized resistance in prescribing as the sole condition of treatment as legitimate combatants of populations of an unoccupied country suddenly invaded, without time for organization, and taking up arms in its defense, to be that they shall observe the laws and customs of war. During the discussion of this chapter an additional article was pro-

posed for adoption by the representative of Great Britain, to the effect that nothing in it should be understood as tending to diminish or suppress the right of the population of an invaded country to fulfil its patriotic duty of offering to the invaders by all legitimate means the most strenuous resistance. The article was warmly supported by the representative of Switzerland, but was just as decidedly opposed by the representative of Germany. The proposed article was withdrawn by its author, under appeals from delegates favoring its spirit but deeming it superfluous and calculated to endanger the adoption of the portion of the code under consideration. It is the opinion of the United States representative that the withdrawal was wise, in view of the concession in Article 2 of all that is covered by the one proposed.

Chapter II, Articles 4 to 20, treats of prisoners of war.

Article 4 stipulates that their personal property, with the exception of arms, horses and military papers, shall remain in their possession. The case is not specially covered of large sums of money which may be found on the persons of prisoners or in their private luggage, and referred to in Article 72 of General Order No. 100 in such a way as to throw doubt upon the strictly private character of such funds.

Article 6 provides, as does Article 76 of General Order 100, that prisoners of war may be required to perform work, but it goes further, in that it covers the fact and the determination of the rate of payment for such work and the disposition to be made of such pay.

Article 77 of General Order No. 100, which provides for severe penalty, even for death, for conspiracy among prisoners of war to effect a united or general escape or to revolt against the authority of the captors, has no counterpart in the new code. Article 12 of the new code provides that in case of breach of parole the offender shall be brought to trial, but it does not prescribe the death penalty as does Article 124 of General Order No. 100.

Articles 14, 15, 16 and 17 are quite new in their scope. They provide for establishment of a bureau of information in regard to prisoners of war and prescribe its duties; also for the extension, under necessary guarantees, of all proper facilities to members of duly organized prisoners' aid societies; for franking privileges for the bureau of information; for exemption from postal and customs charges of letters, orders, money, and packages of or for prisoners of war, and of the possible advance to officers of the pay allowed

by their Government in such situation, to be afterward repaid by the latter. It will be observed that in case of adoption of the code by the United States, enabling legislation by Congress will be required for the operation of these four articles.

Chapter III, Article 21, treats of the sick and wounded, and it contains only a reference to the Geneva Convention.

Section II, of five chapters, treats of acts of war. Chapter I, Articles 22 and 23, refers to legitimate means of injuring the enemy, to sieges, and to bombardments.

Article 23 prohibits the issue of the declaration that no quarter will be given, not making allowance for the special case contemplated in Article 60 of General Order No. 100, of a commander in great straits, such that his own salvation makes it impossible for him to encumber himself with prisoners, nor for the retaliatory measures contemplated by Articles 61, 62, 63, and 66 of General Order No. 100. The death penalty prescribed by Article 71 of the Order, for killing or wounding a disabled enemy, is not found among the provisions of the code.

Article 23 also forbids the destruction or seizure of private property except when imperiously required by the necessities of war. During the discussion of this prohibition the United States representative stated the desire of his Government that it should extend to private property both upon land and sea, and that the revision of the declaration of the Conference of Brussels, which the Powers had been invited to make, had been understood to properly include this extension, that he could not accept the decision of the chairman that the subcommittee was not competent to consider it, because of the limitation of the revision strictly to the subject of land warfare, although he would not insist upon an immediate decision as to such competence, asking simply that the subject be left open for further treatment by the full committee and by the Conference. The method of after-treatment, by which the subject was relegated to the consideration of a future Conference, is familiar to the commission.

Article 25 forbids the bombardment of unprotected cities. It was proposed by the Italian representative that the interdiction should extend to bombardment from the sea as well as from the land, but upon the manifestation of opposition to this extension action was limited to the expression of a hope that the subject would be considered by a future conference; the representative of Great Britain

abstaining from this expression because of lack of instruction upon the subject.

Chapter II, Articles 29 to 31, treats of spies. It does not prescribe the punishment to be inflicted in case of capture.

Chapter III, Articles 32 to 34, refers to flags of truce.

Chapter IV, Article 35, to capitulations.

Chapter V, Articles 36 to 41, to armistices.

Section III, of a single chapter, Articles 43 to 46, treats of the delicate subject of military authority upon hostile territory. The omission of some of its provisions was urged by the representatives of Belgium, upon the ground that they had the character of sanctioning in advance rights of an invader upon the soil and of thus organizing the *régime* of defeat; that rather than to do this it would be better for the population of such territory to rest under the general principle of the law of nations. The provisions were retained upon the theory that, while not acknowledging the right, the possible fact had to be admitted and that wise provision required that proper measures of protection for the population and of restrictions upon the occupying force should be taken in advance.

Article 43 is stronger in its terms than Article 3 of General Order No. 100, in requiring respect by the occupying force, unless absolutely prevented, of the laws in force in the occupied territory.

Article 26 of General Order No. 100, in regard to an oath of allegiance and fidelity on the part of magistrates and other civil officers, may require modification in view of Article 45 of the new code, although this may possibly not be necessary, as the latter article mentions only populations.

Articles 48 to 54 refer to contributions and requisitions in money and kind; they are more detailed in their provisions than the articles of General Order No. 100 referring to the same subject, but they do not differ therefrom in spirit and general purport. They express the idea that such contributions are not to be made for the purpose of increasing the wealth of the invader. The provision that the shore ends of submarine cables might be treated in accordance with the necessities of the occupying force and that restitution should be made and damages regulated at the conclusion of peace, after having at first found entry into the code, was afterward stricken out at the instance of the British representative.

Article 46 forbids the seizure or destruction of works of art or

similar objects, and is in this respect more restrictive than Article 36 of General Order No. 100, which permits the removal of such articles for the benefit of the Government of the occupying army and regulates the ultimate settlement of their ownership to the treaty of peace.

Section IV, of a single chapter, Articles 57 to 60, treats of belligerents confined, and of sick and wounded cared for, upon neutral territory, a subject not referred to in General Order No. 100. It provides generally that obligation is imposed upon the neutral to see that such persons shall not take further part in the war, but attention was invited by the United States representative to the fact that for sick and wounded simply passing through neutral territory on their way to their own country, no such provision is made. Because of anticipated difficulty in securing harmony or for other reasons the committee did not decide the question, and a decision was not demanded by the United States representative, who could see no direct interest of the United States in question, which he had raised only in the interest of good work. During the progress of the work of the subcommittee expression was made, upon the initiative of the representative of Luxemburg, of the hope that the question of the regulation of the rights and duties of neutrals would form part of the program of an early conference.

Foreign ambassadors, ministers, other diplomatic agents and consuls, whose treatment is regulated by Articles 8, 9 and 87 of General Order No. 100, are not mentioned in the new code. It is also silent upon the subject of guerillas, armed prowlers, war rebels, treachery, war traitors and guides, treated in Sections 4 and 5 of General Order No. 100.

It is not attempted to make this report a full digest of the proposed code or a complete exposition of its relations with the existing instructions for the government of the armies of the United States in the field—the object is to present such general summary as may indicate that the convention containing the code is a proper one for the commission to recommend the acceptance of by the Government of the United States, and also that because of the extent and importance of the subject such acceptance should be preceded by a careful examination of the code by the department of military law. The agreement in the convention to issue to the armies of the signatory Powers instructions in conformity with the code, is not under-

stood to mean that such instructions shall contain nothing more than is found in the code itself, but that all the provisions of the code shall be met and none of them violated in such instructions. A very complete discussion of the articles of the code is contained in the report of Mr. Rolin, the official reporter of the subcommittee, which is hereto annexed and marked C.[1]

WILLIAM CROZIER,
Captain of Ordnance, U. S. A.,
Commissioner.

REPORTS OF MESSRS. WHITE, LOW AND HOLLS TO THE AMERICAN DELEGATION TO THE FIRST HAGUE CONFERENCE, REGARDING THE WORK OF THE THIRD COMMITTEE OF THE CONFERENCE[2]

THE HAGUE, *July 31, 1899.*

Commission of the United States of America to the International Conference at The Hague.

GENTLEMEN: The undersigned members of the third commission of the Conference, to which was referred the matter of arbitration and mediation, have the honor of submitting the following report regarding the work of the committee:

The committee on arbitration was appointed at the second session of the Conference, held May 20, 1899; and on Tuesday, May 23, the committee met for the first time under the chairmanship of M. Léon Bourgeois of France. It then discussed merely routine business and adjourned until Friday, May 25. At this meeting it was decided to appoint a subcommittee called the *comité d'examen,* to consist of eight members, for the purpose of drafting a plan for international arbitration and mediation. The membership of the *comité d'examen* was proposed by the so-called bureau of the full committee, consisting of the president, honorary presidents, and the vice-president, as follows: M. Chevalier Descamps of Belgium, M. Asser of the Netherlands, M. de Martens of Russia, Professor Zorn of Germany, Professor Lammasch of Austria, M. Odier of Switzerland, Baron d'Estournelles de Constant of France, and Mr. Holls of the United States of America. The Honorary Presidents of the Committee, Sir Julian

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[1]Not printed.
[2]Holls, *op. cit.*, p. 523; Scott, *op. cit.*, vol. ii, p. 52.

Pauncefote of England, Count Nigra of Italy, also took part in the work of the *comité d'examen,* as well as the president of the Conference, Baron de Staal of Russia. The *comité d'examen* held eighteen working sessions, all of its members being present at every session, with two exceptions caused by the absence of M. de Martens at the Venezuelan arbitration in Paris.

On July 7, 1899, the *comité d'examen* presented to the full committee the project for the peaceable settlement of international disputes, which, after discussion in the full committee and in the Conference, was, on the 25th of July, unanimously adopted. A copy of this convention is annexed to this report.[1] It consists of sixty-one articles, of which the first contains a general declaration regarding the maintenance of peace. Articles 2 to 8 inclusive relate to good offices and mediation; Articles 9 to 14, to international commissions of inquiry; Articles 15 to 20, to arbitral justice in general; Articles 30 to 57, to the procedure before the said court; and Articles 58 to 61, to the ratification of the convention and the like. All of these articles and the considerations which led to their adoption have been carefully discussed, on behalf of the committee, by its reporter, M. Descamps, whose report is annexed hereto.[1]

At the opening of the first meeting of the third committee of the Conference the Russians proposed a carefully-worked-out scheme:

1. For good offices and mediation.

2. For arbitrations *ad hoc,* to which was annexed a code for arbitral procedure.

3. For international inquiries.

Sir Julian Pauncefote having been given the floor as one of the vice-presidents of the Conference, at once suggested a vote upon the principle of a permanent tribunal for international arbitrations.

The Russians, thereupon, instantly gave notice that they also had a plan for a permanent court which would be submitted in due course. It was thought best to discuss the principles of a permanent court only in connection with a careful discussion of definite plans, and it was therefore then resolved to send all plans bearing on this subject to the *comité d'examen,* together with the Russian proposals for good offices and mediation.

At the meeting of the committee, held Wednesday, May 31, the American project for an international tribunal of arbitration was pre-

[1]Not printed.

sented, through the president of the Conference, M. de Staal. At about the same time, or just before, the English and the Russian plans for a permanent tribunal were also submitted. In the *comité d'examen* the plan proposed by Sir Julian Pauncefote was taken, by the consent of the Russians and Americans, as the basis of the committee's work. This plan, however, has been greatly modified and enlarged, by provisions from both the American and the Russian plans, and also by suggestions made in committee. The plan adopted by the Conference, therefore, while founded on the British proposals so far as the form of the Permanent Court is concerned, is really the work of the *comité d'examen.*

Compared with the original American project, it differs from it essentially in the following particulars. The fundamental idea of the American plan was a court which should not only be permanent but continuous in its functions, consisting of not less than nine judges, from whose number special benches might be chosen by the litigants; provision was also expressly made for the possibility of a session of the entire tribunal at one time. The latter idea was absolutely unacceptable to most of the Continental States. One objection raised to it was that there had not yet been sufficient experience in arbitrations to warrant a continuously sitting tribunal, so that if one were provided it would probably have nothing to do during the greater portion of the year, and thus become an object of criticism, if not of ridicule. Another objection found expression in the fear that such a tribunal would assume a dignity and importance for which the nations were not yet prepared. The expense involved in the payment of salaries to judges whose time would be taken, was also a consideration of no little importance, and the payment of permanent salaries was looked upon as being likely to emphasize the undesirable spectacle of an international court with perhaps little to do. The plan of Sir Julian Pauncefote happily avoided these difficulties, while it yet provided a permanent court not altogether unlike the supreme court of the State of New York, which consists of a comparatively large number of judges who never sit as a body but who are constantly exercising judicial functions, either alone or in separate tribunals made up from among their number. This organization appears in the perfected plan adopted by the Conference.

The American plan further proposed that the tribunal for which it provided should itself appoint its secretary or clerk and supervise

the administration of its own bureau or record office. When the idea of a continuously sitting tribunal was abandoned, another method of administration of the bureau or record office was made necessary. Accordingly, the proposal which has been adopted provides that as soon as nine of the Powers who have acceded to this convention have ratified it, the representatives of the signatory Powers accredited to the Government of the Netherlands will meet under the presidency of the Minister of Foreign Affairs of the Netherlands and organize themselves as a Permanent Council of Administration, whose first duty it will be to create a permanent Bureau of Arbitration. The Council of Administration will appoint a secretary general, secure quarters for the Court and such assistants as may be necessary, in the shape of archivists and other officials who will sit in permanence at The Hague, and who will constitute the working staff and headquarters of the international system of arbitration. The Hague was selected as the seat of the permanent tribunal, by common consent, no proposition or vote favoring any other place having been received.

The American plan provided for one judge from each adhering country. The British proposal suggested two, and on the motion of the German delegate this number was increased to not more than four. The German delegation stated that their reason for proposing a larger number was that the Great Powers, at least, ought, in their opinion, to nominate as members of the tribunal men of eminence, not only in law, but also perhaps a diplomat and perhaps a military or naval expert. The Powers are not restricted to their own citizens in the choice of judges, and two or more Powers may unite in naming the same person. The judges to be named are to hold office for six years, and during the exercise of their functions and when outside of their own country they are to enjoy diplomatic privileges and immunities.

In place of the provision of the American proposal that the tribunal itself should fix its own rules of procedure, the committee adopted a code of procedure proposed by the Russian delegation, with slight amendments. This code is almost identical with the rules of procedure adopted for the British and Venezuela court of arbitration, now in session at Paris. The authors of these rules were, it is understood, M. de Martens, President of the Court, Mr. Justice Brewer of the United States, and Lord Justice Collins of Great Britain.

The provision contained in the American plan that the cases, counter-

cases, depositions, arguments, and opinions of the Court should, after the delivery of the judgment, be at the disposition of anyone willing to pay the cost of transcription, was, by common consent, left as an administrative detail for the consideration of the Council of Administration.

The American proposal that every case submitted to the tribunal must be accompanied by a stipulation signed by both parties, to agree in good faith to abide by the decision, which was also a feature of the Russian proposals, was unanimously adopted; as was also the further American proposal that in each particular case the bench of judges should, by preference, be selected from the list of members of the tribunal. The *comité d'examen* was unwilling to make a categorical rule, as suggested in the American plan, that when the tribunal consisted of only three members none of them should be a native, subject, or citizen of either of the litigating States, but, on the other hand, the American objection to tribunals consisting of only one representative of each litigating State and one umpire was embodied in the provision that, except in case of an agreement to the contrary, the tribunal should, in all cases, consist of five members, two being nominated by each State, the four to choose the fifth. This enables the parties to have one representative each on the bench, while the majority of the tribunal may, nevertheless, consist of entirely impartial judges, who may not necessarily agree on all points with either side.

The American proposal regarding the expenses of the tribunal, that the judges should be paid only when on duty, was in effect adopted. The American proposal was the only one which contained provision for a second hearing for the correction of manifest errors. This provision was inserted in the code of procedure in a permissive form, after much opposition.

The American proposal that the Convention should be in force upon the ratification of nine States was adopted, but the restriction as to the character of these States, contained in the American plan, was omitted as unnecessary. It is substantially certain that among the first adhering States there will be eight European or American Powers, of whom at least four have been signatory Powers of the Treaty of Paris of 1856. It should be observed here that this description was made a part of the American plan, only in order to make it clear that in the opinion of the United States Government the confirmation

of a certain number of the Great Powers was essential to success.

The one distinctive feature of the American plan which was rejected on principle was that providing for the coöperation of the highest courts of each country in the selection of members of the Court of Arbitration. This idea proved absolutely unacceptable to the Continental Powers for various reasons, which have been stated to the department in our despatch Number 10. There is no highest court for the entire Empire of Austria-Hungary, and the relations between the different parts of the Empire are not calculated to make joint action by the two highest courts practicable or desirable. This is also true of Sweden and Norway. In Russia the highest court consists of a Senate of one hundred members, whose coöperation in the matter of appointment would contradict all local traditions. Besides this, the organization of the courts of nearly all Continental countries is based upon the traditions of the Roman Law, and those traditions always have excluded the idea of any action on the part of a judicial tribunal, with reference to the selection of a man or men for any particular purpose, even if the latter were judicial in its nature. Furthermore, in several large European States, notably Germany, the rules governing the practice of the law are such as to prevent the members of the highest court from having any knowledge of the ability or reputation of many of the most noted lawyers or judges, since no one is allowed to practice before the highest court unless he is a resident of the city of its location, and a member of its particular bar, and the rules providing for appeals are very narrow in their limitations. Under these circumstances, the members of those courts are not, like our Justices of the Supreme Court of the United States, or the members of the Privy Council of Great Britain, the best possible advisers with reference to the selection of creditable legal representatives upon the great tribunal, and it was stated that in many cases they were about the last authority to whom the appointing Power would be likely to turn with success for such advice and coöperation. Under these circumstances, the adoption of this feature of our plan was hopeless from the first; but, out of courteous regard for the United States, the *comité d'examen* directed the reporter to mention the importance of a complete disregard of political considerations in the choice of members of the Court.

It will be seen that nothing in the proposed plan or organization of the permanent tribunal is absolutely contrary to the fundamental

ideas set forth in the American proposal, and the code of procedure contains nothing contrary to the principles of equity pleading in English or American courts. In view of the fact that a large majority of the members of the Arbitration Court must necessarily be Europeans trained in the principles of the Roman law, it has been deemed important from the first to secure all possible guarantees against practice or procedure which would put nations having the common law as the basis of their jurisprudence at a disadvantage. It is believed that this end has been successfully accomplished.

Attention is called to the fact that the entire plan for the tribunal and its use is voluntary, so far as sovereign States are concerned. The only seeming exceptions to this rule are contained in Article 1, which provides that the Signatory Powers agree to employ their efforts for securing the pacific regulation of international differences; and Article 27, which says that the signatory Powers consider it to be a duty, in the case where an acute conflict threatens to break out between two or more of them, to remind those latter that the Permanent Court is open to them. The obligation thus imposed is not legal or diplomatic in its nature. These articles merely express a general moral duty for the performance of which each State is accountable only to itself. In order, however, to make assurance doubly sure and to leave no doubt whatever of the meaning of the convention, affecting the United States of America, the commission made the following declaration in the full session of the Conference, held July 25:

> The delegation of the United States of America, in signing the Convention regulating the peaceful adjustment of international differences, as proposed by the International Peace Conference, makes the following declaration:
>
> Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

Under the reserve of this declaration the United States delegates signed the Arbitration Convention itself.

Article 8 of the convention, providing for a special form of the mediation, was proposed individually by Mr. Holls of the United

States commission. It is fully explained in the report of M. Descamps and in the minutes of the meeting of the committee at which it was unanimously adopted. Being purely voluntary in its character it is at least certain that it conflicts with no American interest, while, on the contrary, it is hoped that in particular crises, when the other means provided by the convention of keeping or restoring peace have failed, it may prove to have real and practical value. It is certain that, by the Continental States of Europe, it has been exceedingly well received.

The Convention for the peaceful adjustment of international differences, if ratified by the Senate, will require no special enabling legislation on the part of Congress, beyond the annual appropriation of a sum sufficient to pay the share of the United States of the expenses of the Arbitration Bureau at The Hague. It is provided that these expenses shall be borne by the signatory Powers in the same proportion as is now prescribed by the World's Postal Convention, so that the share, even of a great Power, will be very small.

All of which is most respectfully submitted.

ANDREW D. WHITE,
SETH LOW,
FREDERICK W. HOLLS.

THE HAGUE CONFERENCE OF 1907

PRELIMINARY DOCUMENTS

THE SECRETARY OF STATE OF THE UNITED STATES TO THE AMERICAN DIPLOMATIC REPRESENTATIVES ACCREDITED TO THE GOVERNMENTS SIGNATORY TO THE ACTS OF THE FIRST HAGUE CONFERENCE[1]

DEPARTMENT OF STATE,
WASHINGTON, *October 21, 1904.*

SIR: The Peace Conference which assembled at The Hague on May 18, 1899, marked an epoch in the history of nations. Called by His Majesty the Emperor of Russia to discuss the problems of the maintenance of general peace, the regulation of the operations of war, and the lessening of the burdens which preparedness for eventual war entails upon modern peoples, its labors resulted in the acceptance by the signatory Powers of Conventions for the peaceful adjustment of international difficulties by arbitration, and for certain humane amendments to the laws and customs of war by land and sea. A great work was thus accomplished by the Conference, while other phases of the general subject were left to discussion by another conference in the near future, such as questions affecting the rights and duties of neutrals, the inviolability of private property in naval warfare, and the bombardment of ports, towns, and villages by a naval force.

Among the movements which prepared the minds of Governments for an accord in the direction of assured peace among men, a high place may fittingly be given to that set on foot by the Interparliamentary Union. From its origin in the suggestions of a member of the British House of Commons, in 1888, it developed until its membership included large numbers of delegates from the parliaments of the principal nations, pledged to exert their influence toward the conclusion of treaties of arbitration between nations and toward the accomplishment of peace. Its annual conferences have notably advanced the

[1] *Foreign Relations of the United States,* 1904, p. 10; Scott, *op. cit.,* vol. ii, p. 168.

high purposes it sought to realize. Not only have many international treaties of arbitration been concluded, but, in the conference held in Holland in 1894, the memorable declaration in favor of a Permanent Court of Arbitration was a forerunner of the most important achievement of the Peace Conference of The Hague in 1899.

The annual conference of the Interparliamentary Union was held this year at St. Louis, in appropriate connection with the world's fair. Its deliberations were marked by the same noble devotion to the cause of peace and to the welfare of humanity which had inspired its former meetings. By unanimous vote of delegates, active or retired members of the American Congress, and of every parliament in Europe with two exceptions, the following resolution was adopted:

> Whereas, enlightened public opinion and modern civilization alike demand that differences between nations should be adjudicated and settled in the same manner as disputes between individuals are adjudicated, namely, by the arbitrament of courts in accordance with recognized principles of law, this conference requests the several Governments of the world to send delegates to an international conference to be held at a time and place to be agreed upon by them for the purpose of considering:
>
> 1. The questions for the consideration of which the Conference at The Hague expressed a wish that a future conference be called.
>
> 2. The negotiations of arbitration treaties between the nations represented at the Conference to be convened.
>
> 3. The advisability of establishing an international congress to convene periodically for the discussion of international questions.
>
> And this Conference respectfully and cordially requests the President of the United States to invite all the nations to send representatives to such a conference.

On September 24, ultimo, these resolutions were presented to the President by a numerous deputation of the Interparliamentary Union. The President accepted the charge offered to him, feeling it to be most appropriate that the Executive of the nation which had welcomed the conference to its hospitality should give voice to its impressive utterances in a cause which the American Government and people hold dear. He announced that he would at an early day invite the other nations, parties to the Hague Conventions, to reassemble with a view to pushing forward toward completion the work already begun at The Hague by considering the questions which the first Conference had left unsettled with the express provision that there should be a second Conference.

In accepting this trust the President was not unmindful of the fact, so vividly brought home to all the world, that a great war is now in progress. He recalled the circumstance that at the time when, on August 24, 1898, His Majesty the Emperor of Russia sent forth his invitations to the nations to meet in the interests of peace the United States and Spain had merely halted in their struggle to devise terms of peace. While at the present moment no armistice between the parties now contending is in sight, the fact of an existing war is no reason why the nations should relax the efforts they have so successfully made hitherto toward the adoption of rules of conduct which may make more remote the chances of future wars between them. In 1899 the Conference of The Hague dealt solely with the larger general problems which confront all nations, and assumed no function of intervention or suggestion in the settlement of the terms of peace between the United States and Spain. It might be the same with a reassembled conference at the present time. Its efforts would naturally lie in the direction of further codification of the universal ideas of right and justice which we call international law; its mission would be to give them future effect.

The President directs that you will bring the foregoing considerations to the attention of the Minister for Foreign Affairs of the Government to which you are accredited and, in discreet conference with him, ascertain to what extent that Government is disposed to act in the matter.

Should his Excellency invite suggestions as to the character of the questions to be brought before the proposed Second Peace Conference, you may say to him that, at this time, it would seem premature to couple the tentative invitation thus extended with a categorical program of subjects of discussion. It is only by comparison of views that a general accord can be reached as to the matters to be considered by the new conference. It is desirable that in the formulation of a program the distinction should be kept clear between the matters which belong to the province of international law and those which are conventional as between individual Governments. The Final Act of The Hague Conference, dated July 29, 1899, kept this distinction clearly in sight. Among the broader general questions affecting the right and justice of the relation of sovereign States which were then relegated to a future conference were the rights and duties of neutrals, the inviolability of private property in naval warfare, and the bom-

bardment of ports, towns, and villages by a naval force. The other matters mentioned in the Final Act take the form of suggestions for consideration by interested Governments.

The three points mentioned cover a large field. The first, especially, touching the rights and duties of neutrals, is of universal importance. Its rightful disposition affects the interests and well-being of all the world. The neutral is something more than an onlooker. His acts of omission or commission may have an influence—indirect, but tangible—on a war actually in progress; whilst on the other hand he may suffer from the exigencies of the belligerents. It is this phase of warfare which deeply concerns the world at large. Efforts have been made, time and again, to formulate rules of action applicable to its more material aspects, as in the declarations of Paris. As recently as April 28 of this year the Congress of the United States adopted a resolution reading thus:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is the sense of the Congress of the United States that it is desirable, in the interest of uniformity of action by the maritime States of the world in time of war, that the President endeavor to bring about an understanding among the principal maritime Powers with a view of incorporating into the permanent law of civilized nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerents.
>
> Approved, April 28, 1904.

Other matters closely affecting the rights of neutrals are the distinction to be made between absolute and conditional contraband of war, and the inviolability of the official and private correspondence of neutrals.

As for the duties of neutrals toward the belligerent, the field is scarcely less broad. One aspect deserves mention, from the prominence it has acquired during recent times, namely, the treatment due to refugee belligerent ships in neutral ports.

It may also be desirable to consider and adopt a procedure by which States non-signatory to the original Acts of the Hague Conference may become adhering parties.

You will explain to his Excellency the Minister of Foreign Affairs that the present overture for a second conference to complete the postponed work of the First Conference is not designed to supersede other

calls for the consideration of special topics, such as the proposition of the Government of the Netherlands, recently issued, to assemble for the purpose of amending the provisions of the existing Hague Convention with respect to hospital ships. Like all tentative conventions, that one is open to change in the light of practical experience, and the fullest deliberation is desirable to that end.

Finally, you will state the President's desire and hope that the undying memories which cling around The Hague as the cradle of the beneficent work which had its beginning in 1899 may be strengthened by holding the Second Peace Conference in that historic city.

I am, sir, etc.,

JOHN HAY.

THE SECRETARY OF STATE OF THE UNITED STATES TO THE AMERICAN REPRESENTATIVES ACCREDITED TO THE GOVERNMENTS SIGNATORY TO THE ACTS OF THE FIRST HAGUE CONFERENCE[1]

DEPARTMENT OF STATE,
WASHINGTON, *December 16, 1904.*

SIR: By the circular instruction dated October 21, 1904, the representatives of the United States accredited to the several Governments which took part in the Peace Conference held at The Hague in 1899, and which joined in signing the Acts thereof, were instructed to bring to the notice of those Governments certain resolutions adopted by the Interparliamentary Union at its annual conference held at St. Louis in September last, advocating the assembling of a Second Peace Conference to continue the work of the First, and were directed to ascertain to what extent those Governments were disposed to act in the matter.

The replies so far received indicate that the proposition has been received with general favor. No dissent has found expression. The Governments of Austria-Hungary, Denmark, France, Germany, Great Britain, Italy, Luxemburg, Mexico, the Netherlands, Portugal, Roumania, Spain, Sweden and Norway, and Switzerland exhibit sympathy with the purposes of the proposal, and generally accept it in principle, with the reservation in most cases of future consideration of the date on the conference and the program of subjects for discussion. The

[1] *Foreign Relations of the United States,* 1904, p. 13; Scott, *op. cit.,* vol. ii, p. 172.

replies of Japan and Russia conveyed in like terms a friendly recognition of the spirit and purposes of the invitation, but on the part of Russia the reply was accompanied by the statement that in the existing condition of things in the Far East it would not be practicable for the Imperial Government, at this moment, to take part in such a conference. While this reply, tending as it does to cause some postponement of the proposed Second Conference, is deeply regretted, the weight of the motive which induces it is recognized by this Government and, probably, by others. Japan made the reservation only that no action should be taken by the conference relative to the present war.

Although the prospect of an early convocation of an august assembly of representatives of the nations in the interest of peace and harmony among them is deferred for the time being, it may be regarded as assured so soon as the interested Powers are in a position to agree upon a date and place of meeting and to join in the formulation of a general plan for discussion. The President is much gratified at the cordial reception of his overtures. He feels that in eliciting the common sentiment of the various Governments in favor of the principle involved and of the objects sought to be attained a notable step has been taken toward eventual success.

Pending a definite agreement for meeting when circumstances shall permit, it seems desirable that a comparison of views should be had among the participants as to the scope and matter of the subjects to be brought before the Second Conference. The invitation put forth by the Government of the United States did not attempt to do more than indicate the general topics which the Final Act of the First Conference of The Hague relegated, as unfinished matters, to consideration by a future conference—adverting, in connection with the important subject of the inviolability of private property in naval warfare, to the like views expressed by the Congress of the United States in its resolution adopted April 28, 1904, with the added suggestion that it may be desirable to consider and adopt a procedure by which States non-signatory to the original Acts of the Hague Conference may become adhering parties. In the present state of the project, this Government is still indisposed to formulate a program. In view of the virtual certainty that the President's suggestion of The Hague as the place of meeting of a Second Peace Conference will be accepted by all the interested Powers, and in view also of the fact that an organized representation of the signatories of the Acts of 1899 now exists at

that capital, this Government feels that it should not assume the initiative in drawing up a program, nor preside over the deliberations of the signatories in that regard. It seems to the President that the high task he undertook in seeking to bring about an agreement of the Powers to meet in a Second Peace Conference is virtually accomplished so far as it is appropriate for him to act, and that, with the general acceptance of his invitation in principle, the future conduct of the affair may fitly follow its normal channels. To this end it is suggested that the further and necessary interchange of views between the signatories of the Acts of 1899 be effected through the International Bureau under the control of the Permanent Administrative Council of The Hague. It is believed that in this way, by utilizing the central representative agency established and maintained by the Powers themselves, an orderly treatment of the preliminary consultations may be insured and the way left clear for the eventual action of the Government of the Netherlands in calling a renewed conference to assemble at The Hague, should that course be adopted.

You will bring this communication to the knowledge of the Minister for Foreign Affairs and invite consideration of the suggestions herein made.

I am, etc.,

JOHN HAY.

MEMORANDUM FROM THE RUSSIAN EMBASSY HANDED TO THE PRESIDENT OF THE UNITED STATES, SEPTEMBER 13, 1905, PROPOSING A SECOND PEACE CONFERENCE AT THE HAGUE[1]

In view of the termination, with the cordial coöperation of the President of the United States, of the war and of the conclusion of peace between Russia and Japan, His Majesty the Emperor, as initiator of the International Peace Conference of 1899, holds that a favorable moment has now come for the further development and for the systematizing of the labors of that international conference. With this end in view and being assured in advance of the sympathy of President Roosevelt, who has already, last year, pronounced himself in favor of such a project, His Majesty desires to approach him with a proposal to the effect that the Government of the United States take

[1] *Foreign Relations of the United States,* 1905, p. 828.

part in a new international conference which could be called together at The Hague as soon as favorable replies could be secured from all the other States to which a similar proposal will be made. As the course of the late war has given rise to a number of questions which are of the greatest importance and closely related to the Acts of the First Conference, the plenipotentiaries of Russia at the future meeting will lay before the conference a detailed program which could serve as a starting point for its deliberations.

THE RUSSIAN AMBASSADOR TO THE SECRETARY OF STATE PROPOSING THE PROGRAM OF THE SECOND CONFERENCE[1]

IMPERIAL EMBASSY OF RUSSIA,
WASHINGTON, *April 12, 1906.*

MR. SECRETARY OF STATE: When it assumed the initiative of calling a Second Peace Conference, the Imperial Government had in view the necessity of further developing the humanitarian principles on which was based the work accomplished by the great international assemblage of 1899.

At the same time, it deemed it expedient to enlarge as much as possible the number of States participating in the labors of the contemplated conference, and the alacrity with which the call was answered bears witness to the depth and breadth of the present sentiment of solidarity for the application of ideas aiming at the good of all mankind.

The First Conference separated in the firm belief that its labors would subsequently be perfected from the effect of the regular progress of enlightenment among the nations and abreast of the results acquired from experience. Its most important creation, the International Court of Arbitration, is an institution that has already proved its worth and brought together, for the good of all, an areopagus of jurists who command the respect of the world. How much good could be accomplished by international commissions of inquiry toward the settlement of disputes between States has also been shown.

There are, however, certain improvements to be made in the Convention relative to the pacific settlement of international disputes. Fol-

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[1] *Foreign Relations of the United States,* 1906, vol. ii, p. 1629; Scott, *op. cit.,* vol. ii, p. 175.

lowing recent arbitrations, the jurists assembled in court have raised certain questions of details which should be acted upon by adding to the said Convention the necessary amplifications. It would seem especially desirable to lay down fixed principles in regard to the use of languages in the proceedings in view of the difficulties that may arise in the future as the cases referred to arbitral jurisdiction multiply. The *modus operandi* of international commissions of inquiry would likewise be open to improvement.

As regards the regulating of the laws and customs of war on land, the provisions established by the First Conference ought also to be completed and defined, so as to remove all misapprehensions.

As for maritime warfare, in regard to which the laws and customs of the several countries differ on certain points, it is necessary to establish fixed rules in keeping with the exigencies of the rights of belligerents and the interests of neutrals.

A convention bearing on these subjects should be framed and would constitute one of the most prominent parts of the tasks devolved upon the forthcoming conference.

Holding, therefore, that there is at present occasion only to examine questions that demand special attention as being the outcome of the experience of recent years, without touching upon those that might have reference to the limitation of military or naval forces, the Imperial Government proposes for the program of the contemplated meeting the following main points:

1. Improvements to be made in the provisions of the Convention relative to the pacific settlement of international disputes as regards the Court of Arbitration and the international commissions of inquiry.

2. Additions to be made to the provisions of the Convention of 1899 relative to the laws and customs of war on land—among others, those concerning the opening of hostilities, the rights of neutrals on land, etc. Declarations of 1899: one of these having expired, question of its being revived.

3. Framing of a convention relative to the laws and customs of maritime warfare, concerning—

The special operations of maritime warfare, such as the bombardment of ports, cities, and villages by a naval force; the laying of torpedoes, etc.;

The transformation of merchant vessels into war-ships;

The private property of belligerents at sea;

The length of time to be granted to merchant ships for their

departure from ports of neutrals or of the enemy after the opening of hostilities;

The rights and duties of neutrals at sea, among others, the questions of contraband, the rules applicable to belligerent vessels in neutral ports; destruction, in case of *vis major,* of neutral merchant vessels captured as prizes;

In the said convention to be drafted, there would be introduced the provisions relative to war on land that would be also applicable to maritime warfare.

4. Additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864.

As was the case at the Conference of 1899, it would be well understood that the deliberations of the contemplated meeting should not deal with the political relations of the several States, or the condition of things established by treaties, or in general with questions that did not directly come within the program adopted by the several cabinets.

The Imperial Government desires distinctly to state that the data of this program and the eventual acceptance of the several States clearly do not prejudge the opinion that may be delivered in the conference in regard to the solving of the questions brought up for discussion. It would likewise be for the contemplated meeting to decide as to the order of the questions to be examined and the form to be given to the decisions reached as to whether it should be deemed preferable to include some of them in new conventions or to append them, as additions, to conventions already existing.

In formulating the above-mentioned program, the Imperial Government bore in mind, as far as possible, the recommendations made by the First Peace Conference, with special regard to the rights and duties of neutrals, the private property of belligerents at sea, the bombardment of ports, cities, etc. It entertains the hope that the Government of the United States will take the whole of the points proposed as the expression of a wish to come nearer that lofty ideal of international justice that is the permanent goal of the whole civilized world.

By order of my Government, I have the honor to acquaint you with the foregoing, and awaiting the reply of the Government of the United States with as little delay as possible, I embrace this opportunity to beg you, Mr. Secretary of State, to accept the assurance of my very high consideration.

ROSEN.

INSTRUCTIONS TO THE AMERICAN DELEGATES TO THE HAGUE CONFERENCE OF 1907[1]

DEPARTMENT OF STATE,
WASHINGTON, *May 31, 1907.*

To Messrs. Joseph H. Choate, Horace Porter, Uriah M. Rose, David Jayne Hill, George B. Davis, Charles S. Sperry, and William I. Buchanan.

GENTLEMEN: You have been appointed delegates plenipotentiary to represent the United States at a Second Peace Conference which is to meet at The Hague on the 15th of June, 1907.

The need of such a Conference was suggested to the Powers signatory to the acts of The Hague Conference of 1899 by President Roosevelt in a circular note by my predecessor, Mr. Hay, dated October 21, 1904, and the project met with a general expression of assent and sympathy from the Powers; but its realization was postponed because of the then existing war between Japan and Russia. The conclusion of the peace which ended that war presenting a favorable moment for further developing and systematizing the work of the First Conference, the initiative was appropriately transferred to His Imperial Majesty the Emperor of Russia as initiator of the First Conference. The Russian Government proposed that the program of the contemplated meeting should include the following topics:

1. Improvements to be made in the provisions of the Convention relative to the peaceful settlement of international disputes as regards the court of arbitration and the international commissions of inquiry.

2. Additions to be made to the provisions of the Convention of 1899 relative to the laws and customs of war on land—among others, those concerning the opening of hostilities, the rights of neutrals on land, etc. Declarations of 1899. One of these having expired, question of its being revived.

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[1] *Foreign Relations of the United States,* 1907, pt. 2, p. 1128; Scott, *op. cit.,* vol. ii, p. 181.

3. Framing of a convention relative to the laws and customs of maritime warfare, concerning—

The special operations of maritime warfare, such as the bombardment of ports, cities, and villages by a naval force; the laying of torpedoes, etc.

The transformation of merchant vessels into war-ships.

The private property of belligerents at sea.

The length of time to be granted to merchant ships for their departure from ports of neutrals or of the enemy after the opening of hostilities.

The rights and duties of neutrals at sea; among others, the questions of contraband, the rules applicable to belligerent vessels in neutral ports; destruction, in cases of *vis major,* of neutral merchant vessels captured as prizes.

In the said convention to be drafted, there would be introduced the provisions relative to war on land that would also be applicable to maritime warfare.

4. Additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864.

We are advised by the Ambassador of Russia, in a note dated March 22/April 4, 1907, that all of the Powers have declared their adhesion to this tentative program. The following remarks, however, have been made in respect thereof:

The Government of the United States has reserved to itself the liberty of submitting to the Conference two additional questions, viz., the reduction or limitation of armaments and the attainment of an agreement to observe some limitations upon the use of force for the collection or ordinary public debts arising out of contracts.

The Spanish Government has expressed a desire to discuss the limitation of armaments.

The British Government has given notice that it attaches great importance to having the question of expenditures for armament discussed at the Conference, and has reserved to itself the right of raising it.

The Governments of Bolivia, Denmark, Greece, and the Netherlands have reserved to themselves, in a general way, the right to submit to the consideration of the Conference subjects not specially enumerated in the program.

Several Governments have reserved the right to take no part in any discussion which may appear unlikely to produce any useful result.

The Russian note proposing the program declared that the de-

liberations of the contemplated meetings should not deal with the political relations of the different States, or the condition of things established by treaties; and that neither the solution of the questions brought up for discussion, nor the order of their discussion, nor the form to be given to the decisions reached, should be determined in advance of the Conference. We understand this view to have been accepted.

In regard to the two questions which were not included in the proposed program, but which the United States has reserved the right to present to the Conference, we understand that notice of the reservation has been communicated to all the Powers by note similar to that from the Russian Ambassador dated March 22/April 4, 1907; so that each Power has had full opportunity to instruct its delegates in respect thereof. The United States understands that as to the topics included in the program the acceptance of the program involves a determination that such topics shall be considered by the Conference, subject to the reserved rights of particular Powers to refrain from discussion of any topic as to which it deems that discussion will not be useful; but that as to the two topics which we have reserved the right to present, there has been no determination one way or the other, the question whether they shall be considered by the Conference remaining for the determination of the Conference itself in case they shall be presented.

It is not expedient that you should be limited by too rigid instructions upon the various questions which are to be discussed, for such a course, if pursued generally with all the delegates, would make the discussion useless and the Conference a mere formality. You will, however, keep in mind the following observations regarding the general policy of the United States upon these questions:

1. In the discussions upon every question it is important to remember that the object of the Conference is agreement, and not compulsion. If such Conferences are to be made occasions for trying to force nations into positions which they consider against their interests, the Powers can not be expected to send representatives to them. It is important also that the agreements reached shall be genuine and not reluctant. Otherwise they will inevitably fail to receive approval when submitted for the ratification of the Powers represented. Comparison of views and frank and considerate explanation and discussion may frequently resolve doubts, obviate difficulties, and lead to

real agreement upon matters which at the outset have appeared insurmountable. It is not wise, however, to carry this process to the point of irritation. After reasonable discussion, if no agreement is reached, it is better to lay the subject aside, or refer it to some future Conference in the hope that intermediate consideration may dispose of the objections. Upon some questions where an agreement by only a part of the Powers represented would in itself be useful, such an agreement may be made, but it should always be with the most unreserved recognition that the other Powers withhold their concurrence with equal propriety and right.

The immediate results of such a Conference must always be limited to a small part of the field which the more sanguine have hoped to see covered; but each successive Conference will make the positions reached in the preceding Conference its point of departure, and will bring to the consideration of further advances toward international agreements opinions affected by the acceptance and application of the previous agreements. Each Conference will inevitably make further progress and, by successive steps, results may be accomplished which have formerly appeared impossible.

You should keep always in mind the promotion of this continuous process through which the progressive development of international justice and peace may be carried on; and you should regard the work of the Second Conference, not merely with reference to the definite results to be reached in that Conference, but also with reference to the foundations which may be laid for further results in future Conferences. It may well be that among the most valuable services rendered to civilization by this Second Conference will be found the progress made in matters upon which the delegates reach no definite agreement.

With this view you will favor the adoption of a resolution by the Conference providing for the holding of further Conferences within fixed periods and arranging the machinery by which such Conferences may be called and the terms of the program may be arranged, without awaiting any new and specific initiative on the part of the Powers or any one of them.

Encouragement for such a course is to be found in the successful working of a similar arrangement for international conferences of the American republics. The second American Conference, held in Mexico in 1901–2, adopted a resolution providing that a third con-

ference should meet within five years and committed the time and place and the program and necessary details to the Department of State and representatives of the American States in Washington. Under this authority the Third Conference was called and held in Rio de Janeiro in the summer of 1906 and accomplished results of substantial value. That Conference adopted the following resolution:

> The governing board of the International Bureau of American Republics (composed of the same official representatives in Washington) is authorized to designate the place at which the Fourth International Conference shall meet, which meeting shall be within the next five years; to provide for the drafting of the program and regulations and to take into consideration all other necessary details; and to set another date in case the meeting of the said Conference can not take place within the prescribed limit of time.

There is no apparent reason to doubt that a similar arrangement for successive general international conferences of all the civilized Powers would prove as practicable and as useful as in the case of the twenty-one American States.

2. The policy of the United States to avoid entangling alliances and to refrain from any interference or participation in the political affairs of Europe must be kept in mind, and may impose upon you some degree of reserve in respect of some of the questions which are discussed by the Conference.

In the First Conference the American delegates accompanied their vote upon the report of the committee regarding the limitation of armaments by the following declaration:

> That the United States, in so doing, does not express any opinion as to the course to be taken by the States of Europe. This declaration is not meant to indicate mere indifference to a difficult problem, because it does not affect the United States immediately, but expresses a determination to refrain from enunciating opinions upon matters into which, as concerning Europe alone, the United States has no claim to enter. The words drawn up by M. Bourgeois, and adopted by the first commission, received also the cordial interest and sympathy with which the United States, while carefully abstaining from anything that might resemble interference, regards all movements that are thought to tend to the welfare of Europe.

Before signing the arbitration convention of the First Conference the delegates of the United States put upon record the following declaration:

> Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

These declarations have received the approval of this Government, and they should be regarded by you as illustrating the caution which you are to exercise in preventing our participation in matters of general and world-wide concern from drawing us into the political affairs of Europe.

3. The attitude of the United States as to consideration of the subject of limiting armaments was stated in a letter from the Secretary of State to the Russian ambassador dated June 7, 1906. That letter, after expressing assent to the enumeration of topics in the Russian programme, proceeded to say:

> The Government of the United States is, however, so deeply in sympathy with the noble and humanitarian views which moved His Imperial Majesty to the calling of the First Peace Conference that it would greatly regret to see those views excluded from the consideration of the Second Conference. [Quoting from the call for the First Conference.]
>
> The truth and value of the sentiments thus expressed are surely independent of the special conditions and obstacles to their realization by which they may be confronted at any particular time. It is true that the First Conference at The Hague did not find it practicable to give them effect, but long-continued and patient effort has always been found necessary to bring mankind into conformity with great ideals. It would be a misfortune if that effort, so happily and magnanimously inaugurated by His Imperial Majesty, were to be abandoned.
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> This Government is not unmindful of the fact that the people of the United States dwell in comparative security, partly by reason of their isolation and partly because they have never become involved in the numerous questions to which many centuries of close neighborhood have given rise in Europe. They are, there-

fore, free from the apprehensions of attack which are to so great an extent the cause of great armaments, and it would ill become them to be insistent or forward in a matter so much more vital to the nations of Europe than to them. Nevertheless, it sometimes happens that the very absence of a special interest in a subject enables a nation to make suggestions and urge considerations which a more deeply interested nation might hesitate to present. The Government of the United States, therefore, feels it to be its duty to reserve for itself the liberty to propose to the Second Peace Conference, as one of the subjects of consideration, the reduction or limitation of armaments, in the hope that, if nothing further can be accomplished, some slight advance may be made toward the realization of the lofty conception which actuated the Emperor of Russia in calling the First Conference.

The First Conference adopted the following resolutions:

> The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.
>
> The Conference expresses the wish that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea and of war budgets.

Under these circumstances this Government has been and still is of the opinion that this subject should be regarded as unfinished business, and that the Second Conference should ascertain and give full consideration to the results of such examination as the Governments may have given to the possibility of an agreement pursuant to the wish expressed by the First Conference. We think that there should be a sincere effort to learn whether, by conference and discussion, some practicable formula may not be worked out which would have the effect of limiting or retarding the increase of armaments.

There is, however, reason to believe not only that there has been the examination by the respective Governments for which the First Conference expressed a wish, but that the discussion of its results has been forestalled by a process of direct communication between a majority of the Governments having the greatest immediate interest in the subject. These communications have been going on actively among the different Governments for nearly a year, and as a result at least four of the European Powers have announced their unwilling-

ness to continue the discussion in the Conference. We regret that the discussion should have taken place in this way rather than at the Conference, for we are satisfied that a discussion at the Conference would have afforded a greater probability of progress toward the desired result. The fact, however, can not be ignored.

If any European Power proposes consideration of the subject, you will vote in favor of consideration and do everything you properly can to promote it. If, on the other hand, no European Power proposes consideration of the subject, and no new and affirmative evidence is presented to satisfy you that a useful purpose would be subserved by your making such a proposal, you may assume that the limitations above stated by way of guidance to your action preclude you from asking the Conference to consider the subject.

4. The other subject which the United States specifically reserved the right to propose for consideration is the attainment of an agreement to observe some limitation upon the use of force for the collection of ordinary public debts arising out of contract.

It has long been the established policy of the United States not to use its army and navy for the collection of ordinary contract debts due to its citizens by other Governments. This Government has not considered the use of force for such a purpose consistent with that respect for the independent sovereignty of other members of the family of nations which is the most important principle of international law and the chief protection of weak nations against the oppression of the strong. It seems to us that the practice is injurious in its general effect upon the relation of nations and upon the welfare of weak and disordered States, whose development ought to be encouraged in the interests of civilization; that it offers frequent temptation to bullying and oppression and to unnecessary and unjustifiable warfare. It is doubtless true that the non-payment of such debts may be accompanied by such circumstances of fraud and wrongdoing or violation of treaties as to justify the use of force; but we should be glad to see an international consideration of this subject which would discriminate between such cases and the simple nonperformance of a contract with a private person, and a resolution in favor of reliance upon peaceful means in cases of the latter class.

The Third International Conference of the American States, held at Rio de Janeiro in August, 1906, resolved:

To recommend to the Governments therein that they consider the point of inviting the Second Peace Conference at The Hague to examine the question of the compulsory collection of public debts, and, in general, means tending to diminish between nations conflicts having a peculiarly pecuniary origin.

You will ask for the consideration of this subject by the Conference. It is not probable that in the first instance all the nations represented at the Conference will be willing to go as far in the establishment of limitations upon the use of force in the collection of this class of debts as the United States would like to have them go, and there may be serious objection to the consideration of the subject as a separate and independent topic. If you find such objections insurmountable, you will urge the adoption of provisions under the head of arbitration looking to the establishment of such limitations. The adoption of some such provisions as the following may be suggested, and, if no better solution seems practicable, should be urged:

The use of force for the collection of a contract debt alleged to be due by the Government of any country to a citizen of any other country is not permissible until after—

1. The justice and amount of the debt shall have been determined by arbitration, if demanded by the alleged debtor.

2. The time and manner of payment, and the security, if any, to be given pending payment, shall have been fixed by arbitration, if demanded by the alleged debtor.

5. In the general field of arbitration two lines of advance are clearly indicated. The first is to provide for obligatory arbitration as broad in scope as now appears to be practicable, and the second is to increase the effectiveness of the system so that nations may more readily have recourse to it voluntarily.

You are familiar with the numerous expressions in favor of the settlement of international disputes by arbitration on the part both of the Congress and of the Executive of the United States.

So many separate treaties of arbitration have been made between individual countries that there is little cause to doubt that the time is now ripe for a decided advance in this direction. This condition, which brings the subject of a general treaty for obligatory arbitration into the field of practical discussion, is undoubtedly largely due to the fact that the Powers generally in the First Hague Conference committed themselves to the principle of the pacific settlement of

international questions in the admirable convention for voluntary arbitration then adopted.

The Rio Conference of last summer provided for the arbitration of all pecuniary claims among the American States. This convention has been ratified by the President, with the advice and consent of the Senate.

In December, 1904, and January, 1905, my predecessor, Mr. Hay, concluded separate arbitration treaties between the United States and Great Britain, France, Germany, Spain, Portugal, Italy, Switzerland, Austria-Hungary, Sweden and Norway, and Mexico. On the 11th of February, 1905, the Senate advised and consented to the ratification of these treaties, with an amendment which has had the effect of preventing the exchange of ratifications. The amendment, however, did not relate to the scope or character of the arbitration to which the President had agreed and the Senate consented. You will be justified, therefore, in assuming that a general treaty of arbitration in the terms, or substantially in the terms, of the series of treaties which I have mentioned will meet the approval of the Government of the United States. The first article of each of these treaties was as follows:

> Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the permanent court of arbitration established at The Hague by the Convention of the 29th July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting States, and do not concern the interests of third parties.

To this extent you may go in agreeing to a general treaty of arbitration, and to secure such a treaty you should use your best and most earnest efforts.

Such a general treaty of arbitration necessarily leaves to be determined in each particular case what the questions at issue between the two Governments are, and whether those questions come within the scope of the treaty or within the exceptions, and what shall be the scope of the Powers of the arbitrators. The Senate amendment which prevented the ratification of each of these treaties applied only to another article of the treaty which provided for special agreements

in regard to these matters and involved only the question who should act for the United States in making such special agreements. To avoid having the same question arise regarding any general treaty of arbitration which you may sign at The Hague, your signature should be accompanied by an explanation substantially as follows:

> In signing the general arbitration treaty the delegates of the United States desire to have it understood that the special agreements provided for in article — of said treaty will be subject to submission to the Senate of the United States.

The method in which arbitration can be made more effective, so that nations may be more ready to have recourse to it voluntarily and to enter into treaties by which they bind themselves to submit to it, is indicated by observation of the weakness of the system now apparent. There can be no doubt that the principal objection to arbitration rests not upon the unwillingness of nations to submit their controversies to impartial arbitration, but upon an apprehension that the arbitrations to which they submit may not be impartial. It has been a very general practice for arbitrators to act, not as judges deciding questions of fact and law upon the record before them under a sense of judicial responsibility, but as negotiators effecting settlements of the questions brought before them in accordance with the traditions and usages and subject to all the considerations and influences which affect diplomatic agents. The two methods are radically different, proceed upon different standards of honorable obligation, and frequently lead to widely differing results. It very frequently happens that a nation which would be very willing to submit its differences to an impartial judicial determination is unwilling to subject them to this kind of diplomatic process. If there could be a tribunal which would pass upon questions between nations with the same impartial and impersonal judgment that the Supreme Court of the United States gives to questions arising between citizens of the different States, or between foreign citizens and the citizens of the United States, there can be no doubt that nations would be much more ready to submit their controversies to its decision than they are now to take the chances of arbitration. It should be your effort to bring about in the Second Conference a development of the Hague tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no

other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility. These judges should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented. The court should be made of such dignity, consideration, and rank that the best and ablest jurists will accept appointment to it, and that the whole world will have absolute confidence in its judgments.

The arbitration convention signed at the First Hague Conference contained no authority for the adherence of non-signatory Powers, but provided:

> The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a separate agreement among the contracting Powers.

This left all the Central and South American States outside of the treaty. The United States has from time to time endeavored to secure an opportunity for them to adhere, and it has now been arranged that this shall be accomplished as a necessary preliminary to their taking part in the Second Conference. The method arranged is that on the day before the opening of the Conference a protocol shall be signed by the representatives of all the Powers signatory to the treaty substantially as follows:

> The representatives at the Second Peace Conference of the States signatories of the convention of 1899 relative to the peaceful settlement of international disputes, duly authorized to that effect, have agreed that in case the States that were not represented at the First Peace Conference, but have been convoked to the present Conference, should notify the Government of the Netherlands of their adhesion to the above-mentioned convention they shall be forthwith considered as having acceded thereto.

It is understood that substantially all the Central and South American States have notified the Government of the Netherlands of their adherence to the Convention, and upon the signing of this protocol their notices will immediately take effect and they will become parties competent to take part in the discussions of the Second Conference looking toward the amendment and extension of the arbitration con-

vention. You will sign the protocol in behalf of the United States pursuant to the full powers already given you.

6. You will maintain the traditional policy of the United States regarding the immunity of private property of belligerents at sea.

On the 28th of April, 1904, the Congress of the United States adopted the following resolution:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is the sense of the Congress of the United States that it is desirable, in the interests of uniformity of action by the maritime States of the world in time of war, that the President endeavor to bring about an understanding among the principal maritime Powers with a view of incorporating into the permanent law of civilized nations, the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerents. Approved April 28, 1904.

This resolution is an expression of the view taken by the United States during its entire history. Such a provision was incorporated in the treaty of 1775 with Prussia, signed by Benjamin Franklin, Thomas Jefferson, and John Adams, and it was proposed by the United States as an amendment to be added to the privateering clause of the Declaration of Paris in 1856. The refusal of the other Powers to accompany prohibition of privateering by such a provision caused the Government of the United States to refuse its adherence to the declaration.

The Congressional resolution was in response to the recommendation of President Roosevelt's message to Congress in December, 1903, quoting and enforcing a previous message by President McKinley in December, 1898, which said:

> The United States Government has for many years advocated this humane and beneficent principle, and is now in a position to recommend it to other Powers without the imputation of selfish motives.

Whatever may be the apparent specific interest of this or any other country at the moment, the principle thus declared is of such permanent and universal importance that no balancing of the chances of probable loss or gain in the immediate future on the part of any nation should be permitted to outweigh the considerations of com-

mon benefit to civilization which call for the adoption of such an agreement.

In the First Peace Conference the subject of the immunity of private property at sea was not included in the program. Consideration of it was urged by the delegates of the United States and was supported by an able presentation on the part of Mr. Andrew D. White. The representatives of several of the great Powers declared, however, that in the absence of instructions from their Governments they could not vote upon the subject; and, under the circumstances, we must consider that gratifying progress was made when there was included in the Final Act of the Conference a resolution expressing—

> The wish that the proposal which contemplates the declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration.

The subject has accordingly been included in the present program and the way is open for its consideration.

It will be appropriate for you to advocate the proposition formulated and presented by the American delegates to the First Conference, as follows:

> The private property of all citizens or subjects of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure on the high seas, or elsewhere by the armed vessels or by the military forces of any of the said signatory Powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said Powers.

7. Since the code of rules for the government of military operations on land was adopted by the First Peace Conference there have been occasions for its application under very severe conditions, notably in the South African war and the war between Japan and Russia. Doubtless the Powers involved in those conflicts have had occasion to observe many particulars in which useful additions or improvements might be made. You will consider their suggestions with a view to reducing, so far as is practicable, the evils of war and protecting the rights of neutrals.

As to the framing of a convention relative to the customs of mari-

time warfare, you are referred to the naval war code promulgated in General Orders 551 of the Navy Department of June 27, 1900, which has met with general commendation by naval authorities throughout the civilized world, and which, in general, expresses the views of the United States, subject to a few specific amendments suggested in the volume of international law discussions of the Naval War College of the year 1903, pages 91 to 97. The order putting this code into force was revoked by the Navy Department in 1904, not because of any change of views as to the rules which it contained, but because many of those rules, being imposed upon the forces of the United States by the order, would have put our naval forces at a disadvantage as against the forces of other Powers, upon whom the rules were not binding. The whole discussion of these rules contained in the volume to which I have referred is commended to your careful study.

You will urge upon the Peace Conference the formulation of international rules for war at sea and will offer the Naval War Code of 1900, with the suggested changes and such further changes as may be made necessary by other agreements reached at the Conference, as a tentative formulation of the rules which should be considered.

8. The clause of the program relating to the rights and duties of neutrals is of very great importance and in itself would furnish matter for useful discussion sufficient to occupy the time and justify the labors of the Conference.

The various subjects which the Conference may be called upon to consider are likely to bring out proposals which should be considered in their relation to each other, as standing in the following order of substantial importance:

(1) Provisions tending to prevent disagreements between nations.

(2) Provisions tending to dispose of disagreements without war.

(3) Provisions tending to preserve the rights and interests of neutrals.

(4) Provisions tending to mitigate the evils of war to belligerents.

The relative importance of these classes of provisions should always be kept in mind. No rules should be adopted for the purpose of mitigating the evils of war to belligerents which will tend strongly to destroy the right of neutrals, and no rules should be adopted regarding the rights of neutrals which will tend strongly to bring about war. It is of the highest importance that not only the rights but the duties of neutrals shall be most clearly and distinctly defined and

understood, not only because the evils which belligerent nations bring upon themselves ought not to be allowed to spread to their peaceful neighbors and inflict unnecessary injury upon the rest of mankind, but because misunderstandings regarding the rights and duties of neutrals constantly tend to involve them in controversy with one or the other belligerent.

For both of these reasons, special consideration should be given to an agreement upon what shall be deemed to constitute contraband of war. There has been a recent tendency to extend widely the list of articles to be treated as contraband; and it is probable that if the belligerents themselves are to determine at the beginning of a war what shall be contraband, this tendency will continue until the list of contraband is made to include a large proportion of all the articles which are the subject of commerce, upon the ground that they will be useful to the enemy. When this result is reached, especially if the doctrine of continuous voyages is applied at the same time, the doctrine that free ships make free goods and the doctrine that blockades in order to be binding must be effective, as well as any rule giving immunity to the property of belligerents at sea, will be deprived of a large part of their effect, and we shall find ourselves going backward instead of forward in the effort to prevent every war from becoming universally disastrous. The exception of contraband of war in the Declaration of Paris will be so expanded as to very largely destroy the effect of the declaration. On the other hand, resistance to this tendency toward the expansion of the list of contraband ought not to be left to the neutrals affected by it at the very moment when war exists, because that is the process by which neutrals become themselves involved in war. You should do all in your power to bring about an agreement upon what is to constitute contraband; and it is very desirable that the list should be limited as narrowly as possible.

With these instructions there will be furnished to you copies of the diplomatic correspondence relating to the conference, the instructions to the delegates to the First Conference which are in all respects reaffirmed and their report, the international law discussions of the Naval War College of 1903, the report of the American delegates to the Conference of the American Republics at Rio de Janeiro in 1906, and the report of the American delegates to the Geneva Conference of 1906 for the revision of the Red Cross Convention of 1864.

Following the precedent established by the commission to the First

Conference, all your reports and communications to this Government will be made to the Department of State for proper consideration and eventual preservation in the archives. The record of your commission will be kept by your secretary, Mr. Chandler Hale. Should you be in doubt at any time regarding the meaning or effect of these instructions, or should you consider at any time that there is occasion for special instructions, you will communicate freely with the Department of State by telegraph. It is the President's earnest wish that you may contribute materially to the effective work of the Conference and that its deliberations may result in making international justice more certain and international peace more secure.

I am, gentlemen, your obedient servant,

ELIHU ROOT.

REPORT TO THE SECRETARY OF STATE OF THE DELEGATES OF THE UNITED STATES TO THE SECOND HAGUE CONFERENCE[1]

HON. ELIHU ROOT,

Secretary of State.

SIR: Pursuant to a request of the Interparliamentary Union, held at St. Louis in 1904, that a future peace conference be held and that the President of the United States invite all nations to send representatives to such a conference, the late Secretary of State, at the direction of the President, instructed, on October 21, 1904, the representatives of the United States accredited to each of the signatories to the acts of the the Hague Conference of 1899 to present overtures for a second conference to the ministers for foreign affairs of the respective countries.

The replies received to this circular instruction of October 21, 1904, indicated that the proposition for the calling of a second conference met with general favor. At a later period it was intimated by Russia that the initiator of the First Conference was, owing to the restoration of peace in the Orient, disposed to undertake the calling of a new conference to continue as well as to supplement the work of the first. The offer of the Czar to take steps requisite to convene a second international peace conference was gladly welcomed by the President, and the Final Act of the Conference only recites in its preamble the invitation of the President.

The Russian Government thus assumed the calling of the Conference, and on April 12, 1906, submitted the following program, which was acceptable to the Powers generally and which served as the basis of the work of the Conference:

> 1. Improvements to be made in the provisions of the Convention relative to the peaceful settlement of international disputes as regards the court of arbitration and the international commissions of inquiry.

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[1] *Foreign Relations of the United States,* 1907, pt. 2, p. 1144; Scott, *op. cit.,* vol. ii, p. 198.

2. Additions to be made to the provisions of the Convention of 1899 relative to the laws and customs of war on land—among others, those concerning the opening of hostilities, the rights of neutrals on land, etc. Declarations of 1899. One of these having expired, question of its being revived.

3. Framing of a convention relative to the laws and customs of maritime warfare, concerning—

The special operations of maritime warfare, such as the bombardment of ports, cities, and villages by a naval force; the laying of torpedoes, etc.

The transformation of merchant vessels into war-ships.

The private property of belligerents at sea.

The length of time to be granted to merchant ships for their departure from ports of neutrals or of the enemy after the opening of hostilities.

The rights and duties of neutrals at sea, among others the questions of contraband, the rules applicable to belligerent vessels in neutral ports; destruction, in cases of *vis major,* of neutral merchant vessels captured as prizes.

In the said convention to be drafted there would be introduced the provisions relative to war on land that would be also applicable to maritime warfare.

4. Additions to be made to the Convention of 1899 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1864.

The United States, however, reserved the right to bring to discussion two matters of great importance not included in the program, namely, the reduction or limitation of armaments and restrictions or limitations upon the use of force for the collection of ordinary public debts arising out of contracts.

It was finally decided that the Conference should meet at The Hague on the 15th day of June, 1907, and thus the Conference, proposed by the President of the United States, and convoked by Her Majesty the Queen of the Netherlands upon the invitation of the Emperor of All the Russias, assumed definite shape and form.

It will be recalled that the First Peace Conference, although international, was not universal, for only a fraction of the Powers recognizing and applying international law in their mutual relations were invited to The Hague. The fact that the uninvited might adhere to the conventions was foreseen by the Conference itself, and the conventions concerning the laws and customs of land warfare and the adaptation to maritime warfare of the principles of the Geneva Con-

vention of the 22d of August, 1864, provided that non-signatory Powers by adhering became admitted to the privileges as well as bound by the liabilities of the various conventions. The Convention for the peaceful adjustment of international difficulties (Art. 60) suggested eventual adherence of such countries, but made this conditioned upon an understanding to be reached by the contracting Powers.

In the circulars of October 21 and December 16, 1904, it was suggested as desirable to consider and adopt a procedure by which States non-signatory to the original acts of the Hague Conference may become adhering parties. This suggestion was taken note of by the Russian Government and invitations were issued to forty-seven countries, in response to which the representatives of forty-four nations assembled at The Hague and took part in the Conference. No opposition was made to the admission of the non-signatory States to the benefits of the Convention of 1899 for the peaceful adjustment of international difficulties, and on the 14th day of June, 1907, the signatories of the First Conference formally consented under their hands and seals to the adhesion of the non-signatory States invited to the Second Conference.

The delegation of the United States to the Conference was composed of the following members:

Commissioners plenipotentiary with the rank of ambassador extraordinary: Joseph H. Choate, of New York; Horace Porter, of New York; Uriah M. Rose, of Arkansas.

Commissioner plenipotentiary: David Jayne Hill, of New York, envoy extraordinary and minister plenipotentiary of the United States to the Netherlands.

Commissioners plenipotentiary with rank of minister plenipotentiary: Brig. Gen. George B. Davis, Judge-Advocate-General, U. S. Army; Rear-Admiral Charles S. Sperry, U. S. Navy; William I. Buchanan, of New York.

Technical delegate and expert in international law: James Brown Scott, of California.

Technical delegate and expert attaché to the commission: Charles Henry Butler, of New York.

Secretary to the commission: Chandler Hale, of Maine.

Assistant secretaries to the commission: A. Bailly-Blanchard, of Louisiana; William M. Malloy, of Illinois.

The Dutch Government set aside for the use of the conference

the Binnenhof, the seat of the States-General, and on the 15th day of June, 1907, at 3 o'clock in the afternoon, the Conference was opened by his Excellency the Dutch Minister for Foreign Affairs in the presence of delegates representing forty-four nations. In the course of his remarks his Excellency offered "a tribute of gratitude to the eminent statesman who controls the destinies of the United States of America. President Roosevelt has greatly contributed to harvest the grain sown by the august initiator of the solemn international Conferences assembled to discuss and to render more exact the rules of international law which, as the States are the first to recognize, should control their relations."

At the conclusion of the address of welcome his Excellency suggested as president of the Conference his Excellency M. Nelidow, first delegate of Russia, and, with the unanimous consent of the assembly, M. Nelidow accepted the presidency and delivered an address, partly personal, in which, in addition to thanking the conference for the honor of the presidency, he called attention to the work of the First Conference and outlined in a general way the underlying purpose of the Second Conference and the hopes of the delegates assembled. At the termination of his address he proposed the personnel of the secretary-general's office.

At the next meeting of the Conference, on the 19th day of June, the president proposed that the Conference follow the procedure of the First Conference, adapting it, however, to the new conditions; for, as the Conference was so large, it seemed advisable to draw up a series of rules and regulations to facilitate the conduct of business. The president thereupon proposed the following twelve articles, which were unanimously adopted, with the exception of the third paragraph of Article 8, which was suppressed:

> ARTICLE 1. The Second Peace Conference is composed of all the plenipotentiaries and technical delegates of the Powers which have signed or adhered to the conventions and acts signed at the First Peace Conference of 1899.
>
> ART. 2. After organizing its bureau, the Conference shall appoint commissions to study the questions comprised within its program.
>
> The plenipotentiaries of the Powers are free to register on the lists of these commissions according to their own convenience and to appoint technical delegates to take part therein.
>
> ART. 3. The Conference shall appoint the president and vice-

presidents of each commission. The commissions shall appoint their secretaries and their reporter.

ART. 4. Each commission shall have the power to divide itself into subcommissions, which shall organize their own bureau.

ART. 5. An editing committee for the purpose of coördinating the acts adopted by the Conference and preparing them in their final form shall also be appointed by the Conference at the beginning of its labors.

ART. 6. The members of the delegations are all authorized to take part in the deliberations at the plenary sessions of the Conference as well as in the commissions of which they form part. The members of one and the same delegation may mutually replace one another.

ART. 7. The members of the Conference attending the meetings of the commissions of which they are not members shall not be entitled to take part in the deliberations without being specially authorized for this purpose by the presidents of the commissions.

ART. 8. When a vote is taken each delegation shall have only one vote.

The vote shall be taken by roll-call, in the alphabetical order of the Powers represented.

[The delegation of one Power may have itself represented by the delegation of another Power.]

ART. 9. Every proposed resolution or desire to be discussed by the Conference must, as a general rule, be delivered in writing to the president, and be printed and distributed before being taken up for discussion.

ART. 10. The public may be admitted to the plenary sessions of the Conference. Tickets will be distributed for this purpose by the secretary general with the authorization of the president.

The bureau may at any time decide that certain sessions shall not be public.

ART. 11. The minutes of the plenary sessions of the Conference and of the commissions shall give a succinct *résumé* of the deliberations.

A proof copy of them shall be opportunely delivered to the members of the Conference and they shall not be read at the beginning of the sessions.

Each delegate shall have a right to request the insertion in full of his official declarations according to the text delivered by him to the secretary, and to make observations regarding the minutes.

The reports of the commissions and subcommissions shall be printed and distributed before being taken up for discussion.

ART. 12. The French language is recognized as the official language of the deliberations and of the acts of the Conference.

The secretary general shall, with the consent of the speaker himself, see that speeches delivered in any other language are summarized orally in French.

The president stated that the program for the work of the Conference was so elaborate that a division of the Conference into four commissions would be advisable; that in so doing the precedent of 1899 would be followed, for the First Conference apportioned the subjects enumerated in the program among three commissions. The following dispositions were thereupon proposed and agreed to:

FIRST COMMISSION

Arbitration.

International commissions of inquiry and questions connected therewith.

SECOND COMMISSION

Improvements in the system of the laws and customs of land warfare.

Opening of hostilities.

Declarations of 1899 relating thereto.

Rights and obligations of neutrals on land.

THIRD COMMISSION

Bombardment of ports, cities, and villages by a naval force.

Laying of torpedoes, etc.

The rules to which the vessels of belligerents in neutral ports would be subjected.

Additions to be made to the Convention of 1899 in order to adapt to maritime warfare the principles of the Geneva Convention of 1864, revised in 1906.

FOURTH COMMISSION

Transformation of merchant vessels into war vessels.

Private property at sea.

Delay allowed for the departure of enemy merchant vessels in enemy ports.

Contraband of war. Blockades.

Destruction of neutral prizes by *force majeure*.

Provisions regarding land warfare which would also be applicable to naval warfare.

The president thereupon proposed as presidents or chairmen of the various committees the following delegates:

First commission: M. Léon Bourgeois.

Second commission: M. Beernaert; assistant president, M. T. M. C. Asser.

Third commission: Count Tornielli.

Fourth commission: M. de Martens.

At the same time the president designated as honorary presidents of the third and second commissions Messrs. Joseph H. Choate and Horace Porter, and as a member of the correspondence committee Hon. Uriah M. Rose. The president recommended that the deliberations be kept secret, or, at least, that they be not communicated by members to the press. The recommendation was unanimously adopted, but was not universally adhered to by the delegates.

The first, second, and third commissions were subsequently divided into subcommissions in order to reduce the numbers and to facilitate the work, and at various times committees of examination were appointed by each of the commissions in order still further to reduce membership and to present in acceptable form projects accepted in principle but not in detail by the various commissions. Finally, in order to correct the language and to assign the various projects already approved to their proper place in the Final Act, a large editing committee (*comité de rédaction*) was appointed at a meeting of the Conference and a subcommittee was appointed, consisting of eight members, to do the work of the large committee and report to it. It may be said that the American delegation was represented on almost all of these various committees and subcommittees.

The actual work of the Conference was, therefore, done in commission and committee. The results, so far as the several commissions desired, were reported to the Conference sitting in plenary session for approval, and, after approval, submitted to the small subediting committee for final revision, which, however, affected form, not substance. The results thus reached were included in the Final Act and signed by the plenipotentiaries on the 18th day of October, 1907, upon which date the Conference adjourned.

The positive results of the Conference might be set forth, with perhaps equal propriety, in either one of two ways: First, by discussing the work of each commission and the results accomplished by each, or, secondly, by enumerating and describing the results in the order in which they appear, arranged by the Conference itself, in the Final Act. The first method would have the advantage of showing

the work of each commission as a whole from the presentation of the various projects until they took final shape in the commission and were approved by the Conference in plenary session. As, however, important projects were considered by the commission, but were not voted upon by the Conference, or, if voted in a form so modified as to appear almost in the nature of original propositions, and inasmuch as the various conventions and measures adopted are arranged in the Final Act without specific reference ot the commissions, it seems advisable to follow the order of the Final Act, so that each measure may occupy the place in the report which was assigned to it by the conference itself. This arrangement will bring into prominence the result rather than the means by which the result was reached, and will prevent in no slight measure repetition and duplication.

Following then the order of the Final Act, the various conventions, declarations, resolutions, and recommendations are prefaced by an apt paragraph setting forth the spirit which animated the conference:

> In a series of reunions, held from June 15 to October 18, 1907, in which the delegates aforesaid have been constantly animated by the desire to realize in the largest measure possible the generous views of the august initiator of the Conference and the intentions of their Governments, the conference adopted, to be submitted to the signatures of the plenipotentiaries, the text of the conventions and of the declaration hereinafter enumerated and annexed to the present act.

The final act then enumerates fourteen subjects, thirteen of which are conventions and one is a declaration. Of each of these in turn.

I.—CONVENTION FOR THE PEACEFUL ADJUSTMENT OF INTERNATIONAL DIFFERENCES

This convention is, both in conception and execution, the work of the First Peace Conference, of 1899, but the eight years which have elapsed since its adoption suggested many improvements and modifications and not a few additions. The extent of the changes will be evident from the mere statement that while the convention of 1899 contained sixty-one articles, the revision of 1907 contains ninety-seven articles. But these figures throw no light upon the nature and importance of the changes. The structure of 1899, however, practically remains intact, the chief addition being the provision

for summary procedure proposed by the French delegation and accepted by the conference. (Title IV, Chapter IV, arts. 86-90.) All important changes which tended either to enlarge the scope of the convention or to facilitate its application, thereby rendering it more useful, will be discussed in detail in the order of the convention.

Articles 2 to 8 of Title II of the revised convention deal with good offices and mediation, and in this title there is only one change of importance, namely, the insertion of the word "desirable" in Article 3, so that the extension of good offices by powers strangers to the conflict is considered not merely useful, as in the convention of 1899, but desirable, as revised by the conference of 1907. The change is perhaps slight, but the powers might well consider a thing useful and yet consider it undesirable. It may well be that the word "desirable" is a step toward moral duty and that in time it may give rise to legal obligation. The same may be said of the insertion of the word "desirable" in Article 9, making the recourse to the international commission of inquiry desirable as well as useful. Both additions were proposed by the American delegation and accepted unanimously by the conference. In this connection it may be advisable to note that a like change has been made upon the proposal of Austria-Hungary in the revision of Article 16 of the original convention, so that the arbitration of judicial questions and questions of interpretation and application of international conventions is declared to be not only efficacious and equitable but desirable. (Art. 38.)

Title III in both the original and revised conventions deals with international commissions of inquiry; but while the convention of 1899 contained but six articles (9–14, inclusive), the revision contains twenty-eight. A little reflection shows the reason for the great care and consideration bestowed upon the commission of inquiry by the recent conference. In 1899 an institution was created which was hoped would be serviceable. In 1907 the creation was revised and amplified in the light of practical experience, for the institution, theoretically commendable, had justified its existence at a very critical moment, namely, by the peaceful settlement of the Dogger Bank incident (1904). The provisions of 1899 were meager and insufficient to meet the needs of a practical inquiry. In 1907 the procedure actually adopted by the commission of inquiry was presented to the conference, studied, considered, and made the basis of the present

rules and regulations. The nature of the commission of inquiry is, however, unchanged. It was and is an international commission charged with the duty of ascertaining the facts in an international dispute, and its duty is performed when the facts in controversy are found. It does not render a judgment, nor does it apply to the facts found a principle of law, for it is not a court. (Art. 35.)

The seat of the commission is The Hague, but the parties may provide in the agreement of submission that the commission meet elsewhere (Art. 11), or the commission may, after its formation and during its session at The Hague, transport itself, with the consent of the parties, to such place or places as may seem appropriate to ascertain the facts in controversy. The parties litigant not only bind themselves to furnish to the commission of inquiry, in the largest measure possible, the means and facilities necessary for the establishment of the facts, but the contracting Powers agree to furnish information in accordance with their municipal legislation unless such information would injure their sovereignty or security.

As previously said, the First Conference created the commission of inquiry, but left it to the parties to the controversy to fix the procedure, specifying only that upon the inquiry both sides be heard. If the procedure were not established in advance by the litigating Powers, it was then to be devised by the commission. (Art. 10.) The disadvantages of this provision are apparent. The parties, inflamed by passion or ill at ease, were, upon the spur of the moment, to devise an elaborate code of procedure, a task which might well be as difficult as to ascertain the facts in dispute. In the next place, if they did not do so, the commission was to fix the procedure. That this task might well be entrusted to the commission is proved by the fact that the commission of 1904 did in fact devise a satisfactory code. But the procedure thus framed could not be known to the litigating countries in advance, and the agents and counsel were thus deprived of the opportunity of familiarizing themselves with it before entering upon the case.

The revision of 1907, therefore, aims to obviate this difficulty by establishing a careful code of procedure based upon the experience of the commission of 1904. It is practical in its nature, for it is based upon actual practice. It provides in advance the procedure of the commission, thus relieving the parties from this serious task and leaving the commission free to begin its labors without the ne-

cessity of drawing up an elaborate system of rules and regulations for the conduct of business before it. The procedure, however, is not obligatory, for the parties may, if they choose, specify in the submission the procedure to be followed (Art. 10), but the Conference recommended a code of procedure which was to be applied if the parties did not adopt other rules (Art. 17). The revision of the title devoted to international commissions of inquiry received the unanimous approval of the Conference.

The selection of commissioners is, and must always be, a matter of delicacy and difficulty. Facts as seen by one person differ from those as seen by another, and national interest tends unconsciously to warp the judgment of one whose country is involved in the controversy. But the value of the findings of fact depends upon their accuracy. If possible, they should be found by a tribunal from which nationals are excluded. The world does not seem to be ready for this ideal solution, but the conference made a serious step toward it by associating strangers to the controversy with the commissioners. Article 12 of the revised Convention for the peaceful adjustment of international differences provides that the commissioners of inquiry, in the absence of a special agreement to the contrary, shall be chosen in accordance with Articles 45 and 57 of the revised Convention. These articles read as follows:

> ART. 45. When the contracting Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the competent tribunal to decide this difference must be chosen from the general list of members of the Court.
>
> Failing the agreement of the parties on the composition of the arbitration tribunal, the following course shall be pursued:
>
> Each party appoints two arbitrators, of whom only one shall be its citizen or subject, or chosen from among those who have been designated by it as members of the Permanent Court. These arbitrators together choose an umpire.
>
> If the votes are equal, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord.
>
> If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.
>
> If these two Powers have been unable to agree within a period of two months, each of them presents two candidates taken from the list of the members of the Permanent Court, outside of the

members designated by the parties and not being the citizens or subjects of either of them. It shall be determined by lot which of the candidates thus presented shall be the umpire.

ART. 57. The umpire is by right president of the tribunal.

When the tribunal does not include an umpire, it appoints its own president.

A consideration of Article 45 discloses that at least one of the commissioners or arbitrators shall be a stranger to the controversy. Article 32 of the convention of 1899 left both commissioners or arbitrators to the free choice of the selecting Power. In the next place, it will be noted that the revised convention endeavors to secure the composition of the commission or court by providing ample machinery for the selection of the umpire. In the convention of 1899, in case of an equality of votes, the selection of the umpire was confided to a third Power designated by the common accord of the parties to the controversy. If, however, the parties failed to agree upon the third Power in question, each litigant chose a neutral Power, and these neutral Powers selected the umpire. It might well happen, however that the agents would be as far from agreement as the principals. The revision therefore provided that in case of disagreement each litigant Power should select two members from the list of the Permanent Court, who should neither be citizens nor owe their appointment to a designating Power; that thereupon the umpire should be chosen by lot from the members of the court so designated.

It will therefore be seen that the commission or court will consist of a body of five, at least two of whose members must be strangers to the controversy. The umpire selected by their common accord may be indifferent. If the commissioners or arbitrators fail to agree and make use of the machinery provided, it follows that the umpire selected is a stranger to the controversy, and of the commission or court consisting of five competent persons a majority, that is to say, three, would be persons having no national interest or bias in the controversy. It would seem, therefore, that the revised convention offers a guaranty for the finding of the facts as impartially as can be the case when national representatives are members of a small commission or court. As these provisions apply to the selection of arbiters for the constitution of the court at The Hague, it is not necessary to refer to them again in detail.

Article 48 of the revision of the convention of 1899 reads as follows:

> The signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.
>
> Consequently, they declare that the fact of reminding the conflicting parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

To these two paragraphs was added the following provision:

> In case of a controversy between two Powers, one of them may always address to the International Bureau a note containing its declaration that it is willing to submit the difference to arbitration.
>
> The Bureau shall immediately make the declaration known to the other Power.

The American delegation of 1899 made the following reserve regarding this article, and the American delegation of 1907 repeated the reserve in the exact language of 1899:

> Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not entering upon, interfering with, or entangling itself in the political questions or internal administration of any foreign State, nor shall anything contained in the said Convention be so construed as to require the relinquishment, by the United States of America, of its traditional attitude toward purely American questions.

The changes regarding the Permanent Court of Arbitration, as in the case of the commission of inquiry, relate chiefly to procedure. In this, as in the previous case, the amendments were the result of experience gained in the actual trial of cases.

In the first place, Article 52, a revision of Article 31, provides that the agreement to arbitrate (the *compromis*) shall specify in detail the period for the appointment of the arbitrators, the form, order, and periods within which the various documents necessary to the arbitration shall be communicated (Art. 63), the amount of money which each party shall deposit in advance to cover expenses. In addition, the agreement to arbitrate shall also, if there is occasion, determine the manner of appointment of the arbitrators, all special powers which the tribunal may have, its seat, the language which it

will use and those whose use will be authorized before it, and, in general, all the conditions which the parties have agreed upon.

It is often difficult to formulate the question to be submitted to the Court, and it may well be that the parties litigant, although willing to arbitrate, may not agree upon the form of submission. In order, therefore, to aid the parties, not to coerce them, the revised convention provides a method by which the Permanent Court is competent to draw up the agreement to arbitrate if the parties agree to leave it to this Court. It may happen that one party is willing and the other is not. The convention therefore provided that in such a case the court might, upon the request of one of the parties, formulate the *compromis*. The exact language of the article follows:

> After an agreement through diplomatic channels has been attempted in vain it is likewise competent, even if the request is made by only one of the parties in case—
>
> (1) Of a difference comprised within a general arbitration treaty concluded or renewed after this convention goes into force, providing an agreement to arbitrate for each difference, and neither explicitly nor implicitly barring the competency of the Court to draw up such agreement to arbitrate. However, recourse to the Court shall not be had if the other party declares that the difference does not in its opinion belong to the category of differences to be submitted to compulsory arbitration—unless the arbitration treaty confers upon the arbitral tribunal the power to decide this preliminary question.
>
> (2) Of a difference arising from contractual debts claimed by one Power of another Power as being due to its citizens or subjects, and for the solution of which the offer of arbitration has been accepted. This provision is not applicable if the acceptance has been made contingent on the condition that the agreement to arbitrate shall be drawn up in another manner.

If the other party consents, and the moral pressure will be great, the special agreement may be reached in this manner; but as the Court is not permanently in session and would have to be constituted for the express purpose of formulating the agreement, it follows that the agreement must in reality be the result of the consent of both parties, because the Court can only be constituted by the joint act and coöperation of both parties litigant. It is supposed, however, that the presence of such a possibility may lead disputants to reach a conclusion, even although they do not care to avail themselves of the machinery provided.

It should be noted that the second section of Article 53 refers to the arbitration of differences arising from contractual debts. As the agreement to renounce the use of force depends upon arbitration, and as arbitration is impossible without the preliminary agreement of submission, it may happen that a failure to agree would destroy, in large measure, the value of the convention. It is hoped that the provisions of this article will enable the agreement to be formulated in extreme cases and thus exclude even the suggestion of force.

The other changes made in the procedure are important, but are not of a nature to cause discussion or comment, because they facilitate but do not otherwise modify the proceedings before the Court.

Chapter IV of the revised convention deals with summary arbitration proceedings. Experience shows that it is difficult to constitute the Permanent Court, and that a trial before it is lengthy as well as costly. The Conference, therefore, adopted the proposal of the French delegation to institute a court of summary procedure, consisting of three judges instead of five, with a provision that the umpire, in case of disagreement, be selected by lot from members of the permanent court strangers to the controversy. The proceedings are in writing, with the right of each litigant to require the appearance of witnesses and experts. It was hoped that a small court with a summary procedure might lead nations to submit cases of minor importance and thus facilitate recourse to arbitration and diminish its expense.

From this brief survey of the amendments to the Convention for the peaceful adjustment of international differences it will be seen that they are not in themselves fundamental, that they do not modify the intent or purpose of the original convention, but that they render the institution of 1899 more efficient in the discharge of its duties. The American delegation, therefore, assisted in the work of revision and signed the convention.

II.—CONVENTION CONCERNING THE LIMITATION OF THE EMPLOYMENT OF FORCE IN THE COLLECTION OF CONTRACT DEBTS

This convention is composed of but two paragraphs, and in simplest terms provides for the substitution of arbitration for force in the collection of contractual debts claimed of the Government of one country by the Government of another country to be due to its nationals. The renunciation of the right to use force is explicit, but to

receive the full benefit of this renunciation the debtor must in good faith accept arbitration. Should the parties be unable, or should it be difficult, to formulate the special agreement necessary for the submission of the case, resort may be had to the Permanent Court for the establishment of the special agreement (*compromis*) in accordance with Article 53 of the Convention for the peaceful adjustment of international differences.

Finally, the arbitration shall determine, in the absence of agreement between the parties, the justice and the amount of the debt, the time and the mode of payment thereof. It would seem, therefore, that this convention of but two articles will prevent a recourse to force in the future for the collection of contract debts. It should not be overlooked that the agreement to arbitrate is obligatory upon debtor as well as creditor and that the acceptance of the convention is a triumph for the cause of arbitration. It is true that the right to use force was only renounced conditioned upon an arbitration of the indebtedness, but it is not too much to say that the debtor nation may henceforth protect itself from the danger of force and that the application or non-application of force really depends upon the good faith of the debtor. This convention was introduced by the American delegation and adopted by the Conference.

III.—CONVENTION RELATIVE TO THE OPENING OF HOSTILITIES

The convention is very short and is based upon the principle that neither belligerent should be taken by surprise and that the neutral shall not be bound to the performance of neutral duties until it has received notification, even if only by telegram, of the outbreak of war. The means of notification is considered unimportant, for if the neutral knows, through whatever means or whatever channels, of the existence of war, it can not claim a formal notification from the belligerents before being taxed with neutral obligations. While the importance of the convention to prospective belligerents may be open to doubt, it is clear that it does safeguard in a very high degree the rights of neutrals and specifies authoritatively the exact moment when the duty of neutrality begins. It is for this reason that the American delegation supported the project and signed the convention.

IV.—CONVENTION CONCERNING THE LAWS AND CUSTOMS OF WAR ON LAND

The Conference of 1899 codified the laws of warfare on land within the compass of sixty articles, to which was prefaced an introduction of a formal nature consisting of five articles. The recent Conference revised the convention of 1899, modified it in parts, and added various provisions in order to render the codification as complete and thorough, as accurate and scientific, as the changeable nature of the subject will permit. Following the arrangement of 1899, the revised convention contains several introductory articles, one of which will be discussed later. The various modifications and the additions of the revised convention will be briefly set forth in the order of the convention.

Article 2 is substantially the original text of 1899, with the additional requirement that the population of a non-occupied territory shall be considered as belligerent "if it carries arms openly and respects the laws and customs of war." States with large permanent armies are unwilling to accord belligerent rights to populations rising at the approach of an enemy. The smaller States, on the contrary, which do not maintain large standing armies, rely upon the patriotism of the mass of the people. This article is conceived in the interest of the small Power with a small standing army, but requires that the population shall not only conform to the laws of war, but shall bear arms openly, so that their military character may be evident.

Article 5 is amended in the interest of the prisoners of war. In its original form the article permitted the internment of prisoners and their confinement "as an indispensable measure of security." The right of confinement is restricted by the addition of the phrase "and only during the existence of the circumstances which necessitate that measure.

Article 6 is slightly modified and improved by withdrawing from captor States the right to utilize the labor of "commissioned officers." The final paragraph of the original article provided that prisoners should be paid for their work and labor according to the tariffs in force for soldiers of the national army. As it appeared that tariffs in this case were not universal, the following clause was added: "If there are no established rates, at rates appropriate to the work done."

The bureau of information regarding prisoners of war was established by Article 14 and, although excellent in conception, is defective in certain regards; for example, inadequate provision is made for keeping the records of individual prisoners of war and for the disposition of their records at the termination of the war. The revision supplies the omissions.

Article 17 in original form provided that officers who were prisoners of war should receive pay according to the tariff of their country. As, however, many nations, including the United States, allow no pay to such prisoners, the article was revised and modified to read as follows:

> The Government will allow to officers who are prisoners in its hands the pay to which officers of the same grade are entitled in its own service, subject to the condition that it shall be reimbursed by their own Government.

To a nation which cultivates neutrality this provision can impose no serious burden.

Article 23 prohibits certain means of destruction and certain actions of belligerents. To the large category are added two additional paragraphs. It is forbidden to declare extinguished, suspended, or inadmissible in courts of justice the rights and choses in action of the citizens or subjects of the adverse party. The second addition demands more than a quotation, for the additional paragraph forbids a belligerent to force enemy citizens or subjects into taking part against their country, even although such citizens or subjects may have been in its service before the commencement of the war. While it can not be said that war is exclusively a relation between State and State, the modern tendency is to exclude peaceful non-combatants from its rigors. The inhibition of this paragraph frees the population of an invaded territory from being called upon and forced to serve and extends the inhibition to those who may have been in the service of the belligerent before the outbreak of the war. Attention may be called in this place to Article 44, which further extends and safeguards the right of the inhabitants of occupied territory by forbidding the enemy to force the inhabitants to give information concerning the opposing army or its means of defense.

The original Article 25 forbade belligerents to attack or bombard undefended towns, villages, dwelling places, or buildings. The

framers of this article had in view the ordinary means of attack and bombardment. The increased employment of balloons or other like agencies in military operations suggested the insertion of the phrase "by any means whatsoever," so that undefended towns, villages, dwellings, or buildings are not subject to land, aerial, or, as will be seen later, naval attack. (See Convention IX.) In Article 27 historical monuments are included in the buildings exempt from bombardment.

A slight addition is made to Article 52, providing that the payment of levies in kind, verified by receipts, "shall be arranged for as soon as possible." A nearer approach is thus made to final payment.

Article 53 as amended brings within the scope of military operations "all means of communication and of transport employed on land or sea or in the air for the conveyance of persons, things, or messages," but provides that they shall be restored and indemnities agreed upon at the establishment of peace. The last paragraph of the article provides that submarine cables connecting the occupied or hostile territory shall only be subject to destruction or seizure in case of absolute necessity. They are likewise to be restored and indemnities agreed upon.

Such are the changes suggested by the experience of the past eight years proposed to and adopted by the Conference. Few in number their importance is considerable, if for no other reason, that they make for completeness, supplying omissions and resolving doubts. An officer in the field can not well be expected to weight and balance with nicety the vexed problems of international law. A clear and concise code is what he needs and must have. This the convention supplies, and it must therefore be widely acceptable, although we may well cherish the hope that its dispositions may not be tested for years upon the battlefield or in campaign.

In one respect, however, the revised convention clearly surpasses its predecessor, for Article 3 of the introduction supplies a sanction for the violation of its provisions. To quote literally:

> The belligerent party who shall violate the requirements of these regulations shall be held to indemnity in a proper case. It will be responsible for all acts committed by persons forming a part of its armed forces.

Upon this article and the reasons prompting it the military delegate uses the following apt and convincing language:

It is one of the most essential rules of international good neighborhood that the States composing the family of nations shall be guided by the highest good faith in the execution of their treaty obligations. The rules of war of 1899 form no exception to this wholesome and necessary rule. It should be observed, however, that the several requirements of the undertaking are carried into effect—not under the immediate control and direction of the foreign offices of the signatory Powers, but by military officers in the theatre of hostile activity, each acting within the sphere of his command and duty in the military establishment of the belligerent under whose flag he serves. It is not surprising that differences of interpretation and of execution should have arisen in the application of the convention of 1899, or that undue severity should have been shown, from time to time, in the exercise of authority by subordinate commanders. To correct this dangerous tendency and give due emphasis to the well-established administrative principle that the State itself is responsible for the acts of its military commanders and subordinate agents, it was determined to add a concluding paragraph having some of the aspects of a penal clause. Its operation will be to require those charged by their Governments with the exercise of high military command to maintain such a constant supervision over the acts of their subordinates as will be calculated to secure the exact and rigorous enforcement of the several requirements of the convention.

If the circumstances of a particular war are such as to suggest the application of a rule of limitation to cases arising under the article, such mutual stipulations in that regard as are warranted by the facts may properly find a place in the treaty of peace.

V.—CONVENTION CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS AND PERSONS IN LAND WARFARE

This convention is divided into five chapters, dealing, respectively, with the rights and duties of neutral Powers (Arts. 1–10), prisoners and wounded in neutral territory (Arts. 11–15), neutral persons (Arts. 16–18), railroad material (Art. 19), and, finally, dispositions of a formal nature.

The various provisions of the first chapter are largely declaratory of international law and of recognized usage, providing, generally, for the inviolability of neutral territory (Art. 1) and that forcible repression of violations of neutral territory can not be considered a hostile act (Art. 10); that belligerents may not use neutral territory for purposes of transit either of army or supplies (Art. 2); that belligerents shall not install upon neutral territory wireless-telegraph

apparatus (Art. 3); that detachments shall not be recruited or enrolled in neutral territory (Art. 4), but a neutral is not taxed with responsibility by the sole fact that individuals pass its frontiers singly to take service with the enemy (Art. 6); that the neutral should not tolerate upon its territory any acts falling within Articles 2–4, but is only constrained to punish these acts as contrary to neutrality if actually committed upon its territory (Art. 5); that a neutral is not bound to forbid or hinder the exportation or transit, for the account of either belligerent, of arms, munitions, or, in general, of anything which may be useful to an army or fleet (Art. 7); nor is it obliged to interdict or restrain the use by belligerents of its cables, telephones, or telegraphic apparatus, whether owned by the state or private companies (Art. 8); but the provisions of Articles 7 and 8 shall be applied indiscriminately to either belligerent.

The provisions of the chapter dealing with the treatment in neutral countries of interned prisoners and wounded are humanitarian in all their parts and require no comment.

Chapter III, dealing with neutral persons, is but a fragment of the various articles submitted by the German delegation to safeguard the rights of neutral persons and property found upon enemy territory. Briefly, they may be summarized as follows: Citizens or subjects of a neutral State not taking part in the war are considered neutrals (Art. 16); but lose their neutral character if they commit acts of hostility against or in favor of a belligerent, especially if they take service with one or the other enemy (Art. 17). The neutral character, however, is not forfeited by the following acts:

a. Supplies furnished or loans voluntarily made to one of the belligerent parties, provided the furnisher or lender is not a resident of the territory of the other party or of territory in its military occupation and the supplies furnished are not furnished from either of these territories.

b. Services rendered in connection with police or civil administration.

Chapter IV consists of but a single article, providing, briefly, that railroad material belonging to neutral states, corporations, or private individuals shall only be requisitioned or used by a belligerent in case of imperious necessity; that it shall be returned to the country of origin as soon as possible; that a neutral may use like property

belonging to a belligerent in case of necessity, and that an indemnity shall be paid for such use (Art. 19). This last article is unlikely to have any great importance in a country so situated as the United States, but to a country surrounded by strong and powerful neighbors, as is Luxemburg, the proposer of the article, it may be of no little advantage.

The convention as a whole received the support of the American delegation and was signed by the plenipotentiaries.

VI.—CONVENTION REGARDING THE ENEMY'S SHIPS OF COMMERCE AT THE BEGINNING OF HOSTILITIES

The uninterrupted practice of belligerent Powers since the outbreak of the Crimean war has been to allow enemy merchant vessels in their ports at the outbreak of hostilities to depart on their return voyages. The same privilege has been accorded to enemy merchant vessels which sailed before the outbreak of hostilities, to enter and depart from a belligerent port without molestation on the homeward voyage. It was therefore the view of the American delegation that the privilege had acquired such international force as to place it in the category of obligations. Such, indeed, was the view of a majority of the Conference, but as the delegation of Great Britain adhered to the opinion that such free entry and departure was a matter of grace, or favor, and not one of strict right, the articles regard it as a delay by way of favor and refer to the practice as desirable.

In support of the American view the case of the *Buena Ventura* is in point. This case was decided in 1899, and in his opinion Justice Peckham says:

> It being plain that merchant vessels of the enemy carrying on innocent commercial enterprises at the time or just prior to the time when hostilities between the two countries broke out would, in accordance with the later practice of civilized nations, be the subject of liberal treatment by the Executive, it is necessary when his proclamation has been issued, which lays down rules for treatment of merchant vessels, to put upon the words used therein the most liberal and extensive interpretation of which they are capable; and where there are two or more interpretations which possibly might be put upon the language, the one that will be most favorable to the belligerent party, in whose favor the proclamation is issued, ought to be adopted.
>
> This is the doctrine of the English courts, as exemplified in *The*

Phoenix (Spink's Prize Cases, 1, 5) and *The Argo* (Id., p. 52). It is the doctrine which this court believes to be proper and correct. *The Buena Ventura* (175 U. S., 388).

At the first reading, the convention seems to confer a privilege upon enemy ships at the outbreak of war. Free entry and departure are provided for, ships are not to be molested on their return voyages, and a general immunity from capture is granted to vessels from their last port of departure, whether hostile or neutral. But all these immunities are conditioned upon ignorance of the existence of hostilities on the part of the ship. This condition forms no part of the existing practice, and it was the opinion of the delegation that it substantially neutralized the apparent benefits of the treaty and puts merchant shipping in a much less favorable situation than is accorded to it by the international practice of the last fifty years.

An enemy merchant vessel approaching a hostile port which is notified by an armed cruiser, or which obtains the information under circumstances calculated to charge it with knowledge of the fact that hostilities exist, forfeits the immunities conferred by the treaty and becomes *eo instante,* liable to capture. As the freight trade of the world is carried on in steamers which habitually carry only enough coal to reach their destination, the operation of the treaty is to render them instantly liable to capture, the alternative being to continue to the hostile destination and surrender.

The convention operates powerfully in favor of a State having a predominant naval force and possessed of numerous ports throughout the world, so situated that a merchant vessel carrying its flag may take refuge in such ports on being notified that hostilities exist. All other Powers would be placed in a position of great disadvantage, and their merchant marine would suffer incalculable injury as the result of its adoption.

The effects upon the practice of marine insurance are also important. The ordinary contract does not cover a war risk. The operation of a war risk is simple because its conditions and incidents are fully known. But a policy calculated to cover the contingency of capture, the risk of depending upon the chance or possibility of notification would introduce an element of uncertainty into marine risks which in view of the interests at stake, should not be encouraged.

The convention also presents an undesirable alternative in the treat-

ment of enemy merchant ships, in that it provides that in certain cases they may be seized "subject to restoration after the war without indemnity" or to "immediate requisition with indemnity." As merchant marine commerce is carried on it is obvious that the condition of the cargo which is detained in indifferent or inefficient custodianship during the ordinary duration of war would approach confiscation. It would also be substantially impossible to make such a risk the subject of a practicable contract of insurance.

The foregoing convention was not signed by the delegation, and its acceptance as a conventional obligation is not recommended.

VII.—CONVENTION FOR REGULATING THE TRANSFORMATION OF VESSELS OF COMMERCE INTO VESSELS OF WAR

The delegation found no objection to the requirements of the foregoing convention in so far as its application to the transformation of purchased or chartered vessels into public armed vessels is concerned.

The preamble recites the fact that the Powers have been unable to come to an agreement as to the transformation of a merchant vessel into a public armed vessel on the high seas in time of war. For that reason the convention is silent as to the place where such transformation shall take place, and the several articles of the convention are restricted in their operation to such other incidents of the transformation as relate to the authority to make it, the public record of the fact, the external marks of the transformed vessel, the character of the officers and crew, the discipline to be maintained, and the subjection of the vessel in its operations to the rules of maritime warfare.

It will be noted that the question of the place where the transformation of vessels of commerce into vessels of war is expressly excluded by the preamble to the convention because the Conference was unable to harmonize the divergent views upon this matter. The American delegation, wishing to obviate controversies in the future, insisted that the transformation should take place either within the home port or territorial waters of the transforming country. Other delegations insisted that the transformation might take place not only within the home ports and territorial waters, but upon the high seas. As the difference of opinion was radical and irreconcilable, it

was agreed to eliminate the question from the convention, but with such elimination the convention ceased to have any great value.

The delegation would, perhaps, have approved and signed the convention as it stands were it not for the fact that the Conference considered its provisions as the corollary of the Declaration of Paris and as a guaranty against a more or less disguised return to the practice of privateering. The United States has not renounced the right to resort to privateering, although it has on various occasions expressed a willingness so to do if the inviolabilty of unoffending private property belonging to the enemy on the high seas be guaranteed. The American delegation made a declaration to that effect at the thirteenth session of the committee of examination and repeated it at the seventh plenary session of the Conference on September 27, 1907, in the following language:

> It is evident that the propositions incorporated in the report of the committee of examination have for their principal object the reiteration of the Declaration of Paris relative to the abolition of privateering. It is well known that the Government of the United States of America has not adhered to that declaration for the sole reason that it refuses to recognize the inviolability of private property on the high seas. The propositions submitted present questions solely for the consideration of the Powers which are signatories of the Declaration of Paris, and consequently our delegation must, for the present, decline to participate in their discussion and abstain from voting. If, however, the Conference, by its action, should establish the inviolability of private property on the seas, this delegation would be pleased to vote for the abolition of privateering.

The delegation was not unmindful of an internal and constitutional question in taking this action, for Congress is given by the Constitution the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." (Constitution, Art. I, sec. 8, cl. 10.) At various times Congress has exercised this right, by the Acts of June 18, 1812, June 26, 1812, and January 27, 1813, the latter two in furtherance of or amendment to the original Act of 1812. In view of the constitutional origin and nature of the right to grant letters of marque and reprisal, and in view of the fact that this right has been exercised by Congress, it seemed to the American delegation, inadvisable to seek to bind the United States by conventional stipulations.

VIII.—CONVENTION IN REGARD TO THE PLACING OF SUBMARINE MINES

The question of imposing restrictions upon the employment of submarine mines gave rise to extensive discussion and was made the subject of numerous propositions. Some of these were adopted and some were rejected by the Conference. It is quite safe to say, however, that, due to the enormous loss of life and property as a result of the floating mines in the China Sea since the close of hostilities in the vicinity of Port Arthur, international public opinion now demands that anchored mines which may break loose from their moorings, shall, by the fact of going adrift, become harmless. There is a similar demand that non-anchored mines, if employed by belligerents in time of war, shall become inoffensive within a very short time, one or two hours at the longest, after they have passed out of the control of the party who planted them in the high seas or in the territorial waters of a belligerent. Beyond this, if there has been a formulation of public opinion, it is not unanimous and, possibly for that reason, has not found unequivocal expression.

The clauses which were inserted in deference to the demands of the insistent public opinion of the civilized world are embodied in the three numbered paragraphs of Article 1. In Article 2 the placing of mines is prohibited along the coasts or before the ports of an adversary for the sole purpose of interrupting commercial navigation. In other words, a blockade may not be established and maintained by the sole use of submarine mines. Articles 3, 4, and 5 are intended to provide for the safety of navigation of mine fields by commercial vessels and to insure the removal of mines at the close of the war. Article 4 permits neutrals to use mines in the enforcement of their neutral rights and duties. Article 6 contains the stipulation that powers whose existing systems of mine defense do not conform to the requirements of the convention shall bring about such conformity "as soon as possible." In Article 7 the life of the convention is restricted to seven years, or until the close of a third Peace Conference if that date is earlier.

The convention as adopted by the conference in plenary session was generally acceptable to maritime Powers and was approved by the delegation of the United States.

IX.—CONVENTION CONCERNING THE BOMBARDMENT OF UNDEFENDED PORTS, CITIES, AND VILLAGES BY NAVAL FORCES IN TIME OF WAR

The question which the Conference undertook to regulate by a convention might be considered academic were it not for the fact that the possibility of the bombardment of undefended ports, cities, and villages has been suggested and fear expressed that it be carried into practice. It is therefore advisable to prevent in express terms the occurrence of such bombardments; a precedent exists, and the convention brings the rules of land and naval warfare into exact harmony. For example, the rule adopted by the Conference of 1899 is as follows: "The attack or bombardment of towns, villages, habitations, or dwellings which are not defended is prohibited." (Convention concerning laws and customs of land warfare of 1899, Art. 25.)

In applying a remedy to the situation above outlined, the Conference went somewhat beyond the strict necessities of the case. The prohibition in respect to bombardment is embodied in Article 1 of the convention, the last clause of which contains the wholesome requirement that the mere fact that submarine mines are planted in front of a particular port or place shall not operate to take it out of the class of undefended towns.

In Article 2, which is in the nature of an excepting clause, a naval force is authorized to be employed against "military works, military or naval establishments, depots of arms or material of war, shops and establishments suitable to be utilized for the needs of the enemy's army or navy, and vessels of war then in port." This requirement may be properly regarded as declaratory of the existing rule, which authorizes the destruction of works or establishments in which material of war is manufactured. The mere presence of an armed vessel in the port operates to take the place out of the class of undefended towns.

Article 3 authorizes the employment of naval force to enforce compliance with a proper naval requisition—as for coal or provisions. If the right to impose requisitions be conceded—and none is better established in international law—it would inevitably follow that force may be used to collect them. To that extent, therefore, Article 3 is declaratory. The requirement in respect to the amount and character of the requisition is not only new, but proper.

In Article 4 it is expressly forbidden to bombard undefended towns

for the nonpayment of contributions as distinguished from requisitions. This is a wise and salutary provision.

Chapter II is intended to regulate the naval bombardment of fortified places and defended towns and imposes upon the attacking force the same restrictions in respect to historical monuments, churches, artistic and scientific collections, hospitals and similar edifices, which are already recognized in land warfare. (Art. 27, Hague Convention, 1899.) It is also made the duty of the local authorities or inhabitants to designate the buildings which are entitled to immunity by a conventional sign, consisting of two large rectangles on which two triangles are superposed, the upper one being colored black and the lower white.

Article 6 charges the commander of the attacking forces with the duty so far as the military necessities permit, of doing everything in his power to warn the local authorities of the intended bombardment. (Art. 26, Hague Convention, 1899.) In Article 7 pillage is expressly forbidden. (Art. 28, *ibid.*)

From the humanitarian standpoint the convention is desirable, and it is difficult to see how naval operations can suffer by the observance of the conventional restrictions. The American delegation, therefore, approved and signed the convention.

X.—CONVENTION FOR THE ADAPTATION OF THE PRINCIPLES OF THE GENEVA CONVENTION TO MARITIME WAR.

It is the purpose of this convention to replace the corresponding requirements of the maritime convention of July 29, 1899, in respect to the care and treatment of the sick and wounded in maritime warfare. The convention of 1899 was based upon the humane but inadequate, and to some extent obsolete, provisions of the Geneva Convention of 1864. That convention has now been replaced by the new agreement, to which thirty States of the civilized world were signatory parties, entered into at Geneva, Switzerland, on July 6, 1906.

The Geneva Convention of 1906 embodies the advances which have been made in the treatment of the sick and wounded in the forty-two years which had elapsed since the adoption of the original agreement in 1864. The new undertaking, which is restricted in its operation to warfare on land represents the experience gained in recent military operations in the sanitation, transportation, and treatment of the sick and wounded. It is also in close touch with the great volunteer relief

associations, of which the Red Cross Society of the United States is an example, whose function it is not alone to ameliorate the condition of the sick and wounded in time of war, but to act promptly in time of peace with a view to relieve hardship and suffering due to flood, fire, or famine, wherever and under whatsoever circumstances they may occur.

To that end, the convention, like the Geneva Convention of 1906, provides a method of coöperation between the official and charitable agencies which is calculated to secure harmonious and efficient action in the theatre of hostile military activities.

It was the purpose of the Conference to introduce such amendments and ameliorations into the maritime convention of 1899 as were thought necessary to bring it into conformity with the humane requirements of the Geneva Convention of 1906. In point of completeness and efficiency the new convention leaves nothing to be desired.

XI.—CONVENTION WITH REGARD TO CERTAIN RESTRICTIONS UPON THE RIGHT OF CAPTURE IN MARITIME WAR

This convention marks an important step in advance, in that it confers an immunity from capture upon all postal correspondence, public or private, carried as mail on a neutral or enemy vessel. The parcels post is excepted or, to speak more correctly, is not expressly included in the conventional immunity. The carrying vessel is not exempt from seizure in a proper case, but in the event of capture the belligerent becomes charged with the duty of forwarding the mails to their destination "with the least possible delay."

Violation of blockade is excluded from the beneficial operation of the convention in Article 1, and the liability to search and capture are provided for, subject to reasonable restrictions, in Article 2.

The exemption of fishing boats from capture in time of war has been accorded in a number of cases, notably in the leading case of *The Paquete Habana* ([1899] 175 U. S., 677), arising out of the Spanish war, but there have been exceptions, and the rule is by no means one of universal application. The operation of the treaty is to give to the better practice the sanction of conventional obligation and to include small non-seagoing vessels, exclusively engaged in the coast trade, within its beneficial operation. Article 2 confers a similar immunity upon the vessel engaged in scientific, religious, or philanthropic missions.

The concluding chapter regulates the treatment to be accorded to neutral and enemy subjects found on board a captured enemy merchant vessel. The language of the naval delegate states the aim and purpose of the stipulation in the following concise and apt terms:

> A distinction is made between neutral and enemy subjects. The neutral citizens or subjects in the crew are released unconditionally without any engagement. The officers who are neutral citizens or subjects are released upon giving a written engagement not to serve on board an enemy ship during the war.
>
> The enemy subjects or citizens are required to give a written engagement not to take part in any service having relation to the operations of the war during the continuance of hostilities.
>
> The reserve contained in Article IV is intended to apply to the case of vessels engaged in unneutral service, such as the conveyance of fuel or supplies directly to the fleet and, in general to merchant vessels coöperating with naval forces. The crews of such vessels under the present rules of international law are subject to retention as prisoners of war and no new hardship is imposed.

As the convention in all its parts is conceived in a highly humane spirit, the American delegation both approved and signed it.

XII.—CONVENTION REGARDING THE ESTABLISHMENT OF AN INTERNATIONAL PRIZE COURT

The details of this convention, as would be expected in an act organizing an international prize court, are complicated. The fundamental principle, however, is simple, namely, that the court of the captor should not pass ultimately upon the propriety or impropriety of a seizure made by the national authorities of which the judge is a subject or citizen; in other words, that one should not be judge in his own cause. It is stated by judges of the highest repute, the great Lord Stowell among the number, that a prize court is an international court, although sitting within the captor's territory and established in pursuance of the rules and regulations issued by the captor; that the law administered in such a court is international law; and that the judgment of the court, in the absence of fraud, is universally binding. This may be the theory, although it seems much like a fiction, for the fact is that prize courts or courts exercising prize jurisdiction are constituted by the municipal authorities; that the judges are appointed, as other municipal judges, by the

sovereign power of the State; that the law administered in the court whether it be largely international in its nature or not, is the municipal or the prize law of the appointing country, and that the judgment delivered has the essential qualities of a national judgment. Even if the court were strictly international, the judge is, nevertheless, a citizen or subject of the captor, and national prejudices, bias, or an indisposition to thwart the settled policy of his country must insensibly influence the judge in the formation of his opinion. The presumption is in favor of the validity of the capture; upon the neutral is imposed the hard and difficult task to overcome this presumption, and the frequency with which judgments of courts of prize, even of the highest and most respectable courts, have been protested through diplomatic channels and the questions submitted anew to the examination of mixed commissions and decided adversely to the captor, would seem to establish beyond reasonable doubt that, international in theory, they are national in fact and lack the impartiality of an international tribunal. Nor are instances lacking of the submission of questions to a mixed commission which have been passed upon by the Supreme Court of the United States sitting as a court of appeal in prize cases and in which the United States has by virtue of an adverse decision of a mixed commission reimbursed the claimants. Reference is made by way of example to the well-known case of *The Circassian* ([1864] 2 Wall., 135, 160), in which the British and American mixed commission made awards in favor of all the claimants. (4 Moore's *International Arbitrations,* pp. 3911–3923.)

The purpose, then, of the convention is to substitute international for national judgment and to subject the decision of a national court to an international tribunal composed of judges trained in maritime law. It was not the intention of the framers of the convention to exclude a judge of the captor's country whose presence on the bench would ensure a careful consideration of the captor's point of view, but to make the decision of the case depend upon strangers to the controversy who, without special interest and national bias, would apply in the solution of the case international law and equity. The national judgment becomes international; the judgment of the captor yields to the judgment of the neutral, and it can not be doubted that neutral Powers are more likely to guard the rights of neutrals than any bench composed exclusively of national judges.

It is not to be presumed, however, that the judgment of the captor will be biased or, if the judgment of the court of first instant be incorrect, that its judgment will not be reversed on appeal to the higher court. It can not be supposed that a judgment of a district court of the United States, if improper, would be affirmed by the Supreme Court of the United States; and it may safely be assumed that few litigants would care to carry a case from the Supreme Court of the United States to an international court, wherever and however established. Delay and expense would militate against it, the known impartiality and the reputation of the Supreme Court would counsel against it, and it would only be an extreme case and one of great importance that it would induce private suitor or National Government to seek a reexamination of the case before an international court.

The American delegation was unwilling to allow an appeal directly from the district court to the international court, as in the original German project, holding that the captor's court of appeal should be given the opportunity to correct or revise a judgment and that if a case be submitted to the international court that court would derive inestimable benefit from a careful consideration of the judgment of the Supreme Court. The project was amended so as to permit one national appeal, out of consideration to the objections of the United States and Great Britain, and when so amended was acceptable to both.

The provisions of Article 46 are of importance in this connection. This article provides, briefly, that each party pays its own expenses; the defeated party the expenses of the procedure and in addition pays into the court 1 per cent. of the value of the object in litigation to the general expenses of the court. Finally, if the suitor be not a sovereign State, but a private individual, a bond may be exacted by the court to guarantee the expenses above mentioned as a condition of taking jurisdiction. It needs no further argument to show that a case is not likely to be presented to the international court unless the amount or principle involved justifies the submission.

Admitting, however, the possibility of appeal, it is important, in the interest of international justice as well as in the interest of the individual suitor, that there be an end of litigation and that the principle of law applicable to the concrete case be established in a judicial proceeding. It is therefore provided that the appeal from the courts of first instance to the national court of appeal shall have

been perfected and the case decided within two years from the date of capture, which period was acceptable to Great Britain, a joint proposer with Germany, notwithstanding the fact that the appeal might be from a British vice-admiralty court situated in a remote quarter of the globe. An examination of all the appeals taken from the judgments of district courts in cases arising out of the late Spanish-American war shows that this period of time was adequate for the ultimate disposition of those cases before the Supreme Court of the United States. The period, therefore, was satisfactory to the American delegation. But it might happen that the case was not settled either in the court of first instance or in the international court of appeal within the conventional period of two years. In such a case it is provided that the case may be transferred from the national court and submitted to the International Court of Prize at The Hague. Should these provisions commend themselves generally, cases will be decided promptly by national courts, and the ultimate decisions of the International Court, if one there is to be, will be handed down before the suitor is broken in fortune and years.

The proposed Court is to consist of fifteen judges, of whom nine shall constitute the quorum necessary for the transaction of business (Art. 14.) They are to be chosen from among jurists of recognized competency in questions of international maritime law and should possess the highest moral consideration. They are to be nominated for a period of six years, and their appointment may be renewed. Of the fifteen judges, eight countries possess the right to nominate each a judge to serve for the full period of six years. In the alphabetical order of the French names these countries are Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia. The remaining seven judges are appointed for a like period of six years, but exercise their functions as judge within a shorter period, the length of active service depending largely upon the commercial and maritime importance of the various nations, their supposed interest in the questions likely to come before the court, and the frequency with which they may appear as suitors. The exact manner in which and the periods during which all the other judges shall be called to exercise their functions appear from the table annexed to the convention and made a part thereof. (Art. 15.) Any classification is bound to be more or less arbitrary, and its acceptance demands no little sacrifice on the part of the State which

possesses less than the full representation. It was felt that the continuous presence in the Court of judges representing the eight States mentioned would form a nucleus of trained judges and that the weight and authority of these judges based upon training and experience would counterbalance the disadvantage of the changes introduced in the Court by the successive participation of representatives of different countries.

As the proposed Court is to be international and is to be established primarily to settle peaceably and by judicial methods controversies arising between State and State involving the validity of capture, the sovereign States whose interests are involved in the controversy may appear before the Prize Court just as such sovereign States in other than prize matters may and do actually appear before an arbitration tribunal. It may thus be that sovereign States will ordinarily be parties plaintiff and defendant.

It may, however, happen that a State does not wish to espouse the cause of its citizens, although convinced that an injustice has been committed. In such a case it would seem to be eminently proper that the injured individual should himself appear before the Court and litigate the question. The fourth article of the convention invests an individual claimant with such right; but, lest the exercise of the right may prove embarrassing to the State, the same article makes this right depend upon the permission of the State whereof the claimant is a subject or citizen, and acknowledges the right of such State either to prevent his appearance or to appear on behalf of such subject or citizen. It is thus seen that whether the State is party litigant or not, it reserves fully the right to control the litigation.

The jurisdiction of the proposed Court is dealt with in Article 7, the translation of which is as follows:

> If the question of law to be decided is provided for by a convention in force between the belligerent captor and the Power which is itself a party to the controversy or whose citizen or subject is a party thereto, the International Court shall conform to the stipulation of the said convention.
>
> In the absence of such stipulations, the international court shall apply the rules of international law. If generally recognized rules do not exist, the court shall decide in accordance with general principles of justice and equity.
>
> The foregoing provisions shall apply with regard to the order of admission of evidence as well as to the means which may be employed in adducing it.

> If, in accordance with Article 3, No. 2 *c*, the appeal is based on the violation of a legal provision enacted by the belligerent captor, the Court shall apply this provision.
>
> The Court may leave out of account statutes of limitation barring procedure according to the laws of the belligerent captor, in case it considers that the consequences thereof would be contrary to justice and equity.

It can not be denied that the question of the jurisdiction of the Court is not only of general interest, but of fundamental importance to the contracting parties. The first clause of the article calls attention to conventional stipulations which, if establishing rules of law, shall be binding upon the Court in controversies between parties to the convention. It was hoped that the provisions of prize law likely to give rise to controversies would be codified by the Conference and that, therefore, there would be a conventional law prescribed by the Conference for the proposed Court. A general agreement was not, however, reached.

The jurisdiction of the Court, as set forth in Article 7, was proposed by Great Britain, and accepted by the Conference as interpreted by the learned and distinguished reporter, Mr. Louis Renault, from whose elaborate report the following weighty passages are quoted as the best contemporary interpretation of the article:

> What rules of law will the new Prize Court apply?
>
> This is a question of the greatest importance, the delicacy and gravity of which can not be overlooked. It has often claimed the attention of those who have thought of the establishment of an international jurisdiction on the subject we are considering.
>
> If the laws of maritime warfare were codified, it would be easy to say that the International Prize Court, the same as the national courts, should apply international law. It would be a regular function of the international court to revise the decisions of the national courts which had wrongly applied or interpreted the international law. The international courts and the national courts would decide in accordance with the same rules, which it would be supposed ought merely to be interpreted more authoritatively and impartially by the former courts than by the latter. But this is far from being the case. On many points, and some of them very important ones, the laws on maritime warfare are still uncertain, and each nation formulates them according to its ideas and interests. In spite of the efforts made at the present Conference to diminish these uncertainties, one can not help realizing that many will continue to exist. A serious difficulty at once arises here.

It goes without saying that where there are rules established by treaty, whether they are general or are at least common to the nations concerned in the capture (the captor nation and the nation to which the vessel or cargo seized belongs), the International Court will have to conform to these rules. Even in the absence of a formal treaty, there may be a recognized customary rule which passes as a tacit expression of the will of the nations. But what will happen if the positive law, written or customary, is silent? There appears to be no doubt that the solution dictated by the strict principles of legal reasoning should prevail. Wherever the positive law has not expressed itself, each belligerent has a right to make his own regulations, and it can not be said that they are contrary to a law which does not exist. In this case, how could the decision of a national prize court be revised when it has merely applied in a regular manner the law of its country, which law is not contrary to any principle of international law? The conclusion would therefore be that in default of an international rule firmly established, the International Court shall apply the law of the captor.

Of course it will be easy to offer the objection that in this manner there would be a very changeable law, often very arbitrary and even conflicting, certain belligerents abusing the latitude left them by the positive law. This would be a reason for hastening the codification of the latter in order to remove the deficiencies and the uncertainties which are complained of and which bring about the difficult situation which has just been pointed out.

However, after mature reflection, we believe that we ought to propose to you a solution, bold to be sure, but calculated considerably to improve the practice of international law. "If generally recognized rules do not exist, the Court shall decide according to the general principles of justice and equity." It is thus called upon to create the law and to take into account other principles than those to which the national prize court was required to conform, whose decision is assailed by the International Court. We are confident that the judges chosen by the Powers will be equal to the task which is thus imposed upon them, and that they will perform it with moderation and firmness. They will interpret the rules of practice in accordance with justice without overthrowing them. A fear of their just decisions may mean the exercise of more wisdom by the belligerents and the national judges, may lead them to make a more serious and conscientious investigation, and prevent the adoption of regulations and the rendering of decisions which are too arbitrary. The judges of the international court will not be obliged to render two decisions contrary to each other by applying successively to two neutral vessels seized under the same conditions different regulations established by the two belligerents. To sum up, the situation created for the new prize

court will greatly resemble the condition which has long existed in the courts of countries where the laws, chiefly customary, were still rudimentary. These courts made the law at the same time that they applied it, and their decisions constituted precedents, which become an important source of the law. The most essential thing is to have judges who inspire perfect confidence. If, in order to have a complete set of international laws, we were to wait until we had judges to apply it, the event would be a prospective one which even the youngest of us could hardly expect to see. A scientific society, such as the Institute of International Law, was able, by devoting twelve years to the work, to prepare a set of international regulations on maritime prizes in which the organization and the procedure of the international court have only a very limited scope. The community of civilized nations is more difficult to set on foot than an association of jurisconsults; it must be subject to other considerations or even other prejudices, the reconcilement of which is not so easy as that of legal opinions. Let us therefore agree that a court composed of eminent judges shall be entrusted with the task of supplying the deficiencies of positive law until the codification of international law regularly undertaken by the Governments shall simplify their task.

The ideas which have just been set forth will be applicable with regard to the order of admission of evidence as well as to the means which may be employed in gathering it. In most countries arbitrary rules exist regarding the order of admission of evidence. To use a technical expression, upon whom does the burden of proof rest? To be rational one would have to say that it is the captor's place to prove the legality of the seizure that is made. This is especially true in case of a violation of neutrality charged against a neutral vessel. Such a violation should not be presumed. And still the captured party is frequently required to prove the nullity of the capture, and consequently its illegality, so that in case of doubt it is the captured party (the plaintiff) who loses the suit. This is not equitable and will not be imposed upon the International Court.

What has just been said regarding the order of evidence also applies to the means of gathering it, regarding which more or less arbitrary rules exist. How can the nationality, ownership, and the domicile be proven? Is it only by means of the ship's papers, or also by means of documents, produced elsewhere? We believe in allowing the Court full power to decide.

Finally, in the same spirit of broad equity, the Court is authorized not to take into account limitations of procedure prescribed by the laws of the belligerent captor, when it deems that the consequences thereof would be unreasonable. For instance, there may be provisions in the law which are too strict with regard to

the period for making appeal or which enable a relinquishment of the claim to be too easily presumed, etc.

There is a case in which the International Court necessarily applies simply the law of the captor, namely, the case in which the appeal is founded on the fact that the national court has violated a legal provision enacted by the belligerent captor. This is one of the cases in which a subject of the enemy is allowed to appeal. (Art. 3, No. 2 *c*, at end.)

Article 7, which has thus been commented upon, is an obvious proof of the sentiment of justice which animates the authors of the draft, as well as of the confidence which they repose in the successful operation of the institution to be created.

The expediency of the establishment of the Prize Court must naturally be determined by those entrusted with such matters. The question of the constitutionality of the proposed international court of prize as a treaty court would seem to be precluded by the decision of the Supreme Court of the United States in *Re Ross* (140 U. S., 453). Indeed, it would seem that that may well be done generally which may be done singly or individually and that the submission of prize cases to an international court of appeal definitively constituted and in session is a wiser, safer, and more commendable practice than to submit questions of prize law to a mixed commission which may, as happened in the past, decide contrary to the Supreme Court of the United States.

In view, therefore, of the advantages of a permanent court to which an appeal may be taken, and in view of the guaranteed impartiality of an international decision, composed as the Court would be in large majority by neutrals, and in view also of the determined policy of the United States to remain a neutral in all international conflicts, it would seem that we need scarcely fear the reversal of the decisions of our courts because such decisions presuppose a war to which we are a party. The existence of the Court offers our citizens an international forum in which to safeguard their interests as neutral buyers and carriers in all parts of the world. The American delegation, therefore, not only approved and signed the convention, but proposed it jointly with Germany, Great Britain, and France.

XIII.—CONVENTION CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS IN CASE OF MARITIME WAR

This convention deals with the important subject of maritime neutrality and formulates the progress which has been made in that sub-

ject in the past half century. It is stated in the preamble that the convention is incomplete; in view of the extent of the field to be covered and the sharply conflicting interests that are involved, a complete treatment of the subject was hardly to be expected. The convention therefore properly contains the suggestion that, in giving effect to its requirements, the rules of international law shall be regarded as supplementing the provisions of the convention. Neutrals are advised that any rules which they may apply, or any measures to which they may resort with a view to the enforcement of their neutral rights or the fulfilment of their neutral obligations, shall be uniformly applied to all belligerents, and shall not be changed during the progress of a particular war.

Out of an abundance of caution the enacting clause contains a provision that the requirements of the convention shall not be regarded as encroaching upon the requirements of existing treaties. In other words, an undertaking like the Black Sea treaty, containing provisions in regard to the passage of war-ships through the Dardanelles, is not modified or abrogated by the requirements of the foregoing convention.

The proposition advanced by England represented the strict views of neutral rights and duties which are held by States maintaining powerful naval establishments, supplemented by a widely distributed system of coaling stations and ports of call, in which their merchant vessels could find convenient refuge at the outbreak of war and which enable them to carry on operations at sea quite independently of a resort to neutral ports for the procurement of coal or other supplies or for purposes of repair. As the policy of the United States Government has generally been one of strict neutrality, the delegation found itself in sympathy with this policy in many, if not most, of its essential details. France for many years past has taken a somewhat different view of its neutral obligations, and has practiced a liberal, rather than a strict, neutrality. The views of France in that regard have received some support from the Russian delegation and were favored to some extent by Germany and Austria.

It was constantly borne in mind by the delegation, in all deliberations in committee, that the United States is, and always has been, a permanently neutral Power, and has always endeavored to secure the greatest enlargement of neutral privileges and immunities. Not only are its interests permanently neutral, but it is so fortunately situated, in respect to its military and naval establishments, as to be able to

enforce respect for such neutral rights and obligations as flow from its essential rights of sovereignty and independence.

With a view, therefore, to secure to neutral States the greatest possible exemption from the burdens and hardships of war, the delegation of the United States gave constant support to the view that stipulations having for that purpose the definition of the rights and duties of neutrals should, as a rule, take the form of restrictions and prohibitions upon the belligerents, and should not, save in case of necessity, charge neutrals with the performance of specific duties. This rule was only departed from by the delegation in cases where weak neutral Powers demanded, and need, the support of treaty stipulations in furtherance of their neutral duties. It was also borne in mind that a State resorting to certain acts with a view to prevent violations of its neutrality derives power to act from the fact of its sovereignty, rather than from the stipulations of an international convention.

The first two articles and the first paragraph of Article 3 of the convention represent in substance the existing rule of international law on the subjects of which they treat. The second paragraph of Article 3 shifts the obligation from the neutral to the captor, who is bound upon request of the neutral to return the prize captured improperly in neutral waters. The neutral, however, is not obligated to make the demand, and it may thus happen that a powerful captor violates neutral waters without protest from the neutral. It may well be that the spirit of the article imposes the duty upon the neutral; the latter does not. The article seems, therefore, to be objectionable.

Article 5 embodies the second of the rules adopted in the treaty of Washington for the guidance of the Geneva tribunal, to which is added a prohibition respecting the establishment of wireless-telegraph stations on neutral territory. Article 6 is new and forbids a neutral State, as such, to transfer vessels or munitions of war to a belligerent. Article 7 embodies the existing rule of international law which charges a State with no duty of forbidding the exportation from or transit of war material through its territory in time of war. Article 8 embodies the first of the rules of the Treaty of Washington for the guidance of the Geneva tribunal.

Article 9 is a correct statement of the existing rule of impartiality in the dealings of neutral States with belligerents. The right to forbid access to its ports to a vessel which has failed or neglected to conform to the orders of the neutral State, or has violated its neutrality, is generally conceded.

Article 10 is new in conventional form, and authorizes the passage of an armed vessel or prize through territorial waters. In the absence of restrictive language this would seem to include straits which connect bodies of water which are open to public navigation. It also recognizes the fact that such mere passage through any territorial waters, provided no acts of hostility are committed, does not compromise the neutrality of the State to which they belong. The requirement of the enacting clause, that the provisions of existing treaties are not abrogated or modified by the convention, applies to this article. It may be noted, in passing, that the rule established in Article 10 is substantially the same, in so far as free passage is concerned, as the rules prescribed by treaty in connection with the passage of the Suez and Panama canals by public armed vessels in time of war.

The stipulations in respect to the use of licensed pilots (Art. 11), the twenty-four hours rule (Articles 12 and 13), and the length of sojourn to repair damages stand in need of no comment.

Article 15 is new and is intended to prevent a neutral port from being made either a base of hostile operations or a place of assembly for the fleets of a belligerent. To that end a neutral may restrict, at discretion, the number of belligerent ships, including auxiliary vessels, that may enjoy its hospitality at any one time. In default of such rule, the number of ships of war or auxiliary vessels that may be in a particular neutral port at the same time is fixed at three.

Article 19 is an extremely important one. It provides that:

> ART. 19. Belligerent vessels of war can not revictual in neutral ports and roads except to complete their normal supplies in time of peace.
>
> Neither can these vessels take on board fuel except to reach the nearest port of their own country. They may, however, take on the fuel necessary to fill their bunkers, properly so called, when they are in the waters of neutral countries which have adopted this method of determining the amount of fuel to be furnished.
>
> If, according to the rules of the neutral Power, vessels can only receive coal twenty-four hours after their arrival, the lawful duration of their sojourn shall be prolonged twenty-four hours.
>
> ART. 20. Belligerent vessels of war which have taken on board coal in the port of a neutral Power, can not renew their supply within three months in a port of the same Power.

The Great Powers of the world are susceptible of being grouped into two classes in the matter of neutral policy. England, having great

naval power, supplemented by an extensive system of coaling stations and commercial ports, has always favored and practiced a policy of strict neutrality. France, less powerful at sea, having few naval stations and with few distant colonial possessions, has been more liberal in the enforcement of its neutral obligations, and has allowed considerable aid to be extended to belligerent vessels in its ports. As England has treated both belligerents with impartial strictness, France has treated them with impartial liberality. With this view Russia and, to some extent, Germany and Austria are in sympathy. As has been seen, the policy of the United States has been in the main similar to that of Great Britain.

In the matter of coal the English delegation proposed that the amount of coal which a belligerent vessel might obtain in a neutral port should be restricted to quarter bunkers. The substantial operation of this rule would be that any public armed vessel that entered a neutral port short of coal would have to be interned until the close of the war, as it would be impossible, in a majority of cases, to reach a home port with so meager an allowance of coal as quarter-bunker capacity. This proposition was rejected, as were a number of suggestions based upon bunker capacity, condition of bottoms, etc., which were so complicated as to be practically impossible in their application.

The result was to reach the compromise which is stated in Article 19, as to which it may be said that the liberal States have yielded rather more than those whose policy is one of strict neutrality. The article represents, it would seem, the most satisfactory conclusion possible for the Conference to reach.

Articles 21 to 25 relate to the admission of prizes to neutral ports. Articles 21 and 22 seem to be unobjectional. Article 23 authorizes the neutral to permit prizes to enter its ports and to remain there pending action on their cases by the proper prize courts. This is objectionable for the reason that it involves a neutral in participation in the war to the extent of giving asylum to a prize which the belligerent may not be able to conduct to a home port. This article represents the revival of an ancient abuse and should not be approved. In this connection it is proper to note that a proposition absolutely forbidding the destruction of a neutral prize, which was vigorously supported by England and the United States, failed of adoption. Had the proposition been adopted, there would have been some reason for authorizing such an asylum to be afforded in the case of neutral prizes.

Article 24 covers the case of the internment of a public armed vessel in a neutral port, and vests sufficient authority in the neutral to ensure respect for its sovereign rights and obligations.

Article 25 is a restatement of the third of the rules of the treaty of Washington, and as such is worthy of adoption.

Article 26 was inserted in the interest of the weaker naval Powers, and contains a stipulation that an exercise of its right by a neutral State, involving possibly a resort to force, shall not be regarded as an unfriendly act by either belligerent.

Article 27 contemplates a mutual exchange of laws, ordinances, regulations, and other authoritative utterances of the respective Governments in respect to the conduct of belligerent vessels of war in their ports and waters. These are to be transmitted to the Dutch Government and by that Government to the other contracting parties.

This convention was made the subject of reservation at the plenary session of the Conference and was not signed by the American delegation. This was done in order to enable the Department to determine whether, all things considered, it was proper or expedient to subject the performance of its neutral rights and duties to some measures of conventional regulation.

By way of recapitulation: The second paragraph of Article 3 and Article 23 should not be approved. As to Article 19, covering the question of coal supply, it can only be said that it represents a compromise of very divergent interests, and that practice under it in the future will be substantially the same as in the past.

The naval delegate of the United States expressed the following opinion:

> The lack of conventional agreements regulating the exercise of neutrality has more than once threatened to involve the whole world in war and perhaps the rules adopted by this Conference, if they are unanimously approved by the maritime Powers, might be accepted as possibly promoting peace, since practically they certify the right of neutrals to do as they please within very wide limits without fear of reclamation, but there is no question that they are not in accord either with the practice of the United States or with its strategic situation.

A careful examination of the convention as a whole and in all its parts leads to the conclusion that its ratification is in the interest of

neutral Powers, but that in such ratification it is suggested that the second paragraph of Article 3 and Article 23 be rejected.

XIV.—DECLARATION FORBIDDING THE LAUNCHING OF PROJECTILES FROM BALLOONS

This declaration consists of but a single article, the essential portion of which follows:

> The contracting parties agree to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.

The declaration was a reënactment of the analogous provision of the First Conference, which, however, being for a period of five years, had elapsed. In order to prevent the lapse of the present declaration, it was provided that it should remain in effect until the end of the Third Conference.

DECLARATION CONCERNING OBLIGATORY ARBITRATION

The Conference was unable to agree upon a general treaty of arbitration, although a large majority expressed itself in favor of a general treaty of arbitration, reserving therefrom questions concerning the independence, vital interests, and honor, and setting forth a list of concrete subjects in which the contracting Powers were willing to renounce the honor clause. The principle of obligatory arbitration was unanimously admitted in the abstract, but when it was proposed to incorporate this principle in a concrete case or series of cases insurmountable difficulties arose. Some Powers seemed willing to conclude arbitration treaties with certain other carefully selected Powers, but were unwilling to bind themselves with the remaining nations of the world. Other nations were willing to renounce the honor clause in some subjects but not in others. It seemed to the friends of arbitration feasible to do generally in a single instrument what they had agreed to do in separate treaties with various countries. The majority felt that it was desirable to conclude at The Hague a general arbitration treaty binding those who were willing to be bound, without seeking, directly or indirectly, to coerce the minority, which was unwilling to bind itself. The minority,

however, refused to permit the majority to conclude such a treaty, invoking the principle of unanimity or substantial unanimity for all conventions concluded at The Hague. In the interest of conciliation the majority yielded, although it did not share the point of view of the minority. The minority on its part recognized unequivocally and unreservedly the principle of obligatory arbitration, and the following declaration was unanimously accepted and proclaimed by the Conference:

> The Conference, conforming to the spirit of good understanding and reciprocal concessions which is the very spirit of its deliberations, has drawn up the following declaration, which, while reserving to each one of the Powers represented the benefit of its votes, permits them all to affirm the principles which they consider to have been unanimously accepted.
>
> It is unanimous:
>
> 1. In accepting the principle for obligatory arbitration.
> 2. In declaring that certain differences, and notably those relating to the interpretation and application of international conventional stipulations, are susceptible of being submitted to obligatory arbitration without any restrictions.

The friends of arbitration were bitterly disappointed and the American delegation abstained from voting on the declaration; first, because it seemed to be an inadmissible retreat from the advanced position secured by an affirmative vote of four to one in favor of the arbitration convention, and, second, lest an affirmative vote be construed to indicate both an approval of the arguments or methods of the minority as well as of the withdrawal of the proposed treaty. It may be admitted that the establishment of the principle of obligatory arbitration is an advance. It is not, however, the great advance so earnestly desired; for a concrete treaty embodying the principle of obligatory arbitration would have been infinitely more valuable than the declaration of obligatory arbitration, however solemnly made.

RESOLUTION CONCERNING THE LIMITATION OF MILITARY CHARGES

It is familiar knowledge that the First Peace Conference was called primarily to "secure a possible reduction of the excessive armaments which weigh upon all nations," and in the program contained in the second Russian circular (January 11, 1899) one of the purposes

was stated to be "to reach an understanding not to increase for a fixed period the present effective of the armed military and naval forces, and at the same time not to increase the budgets pertaining thereto, and a preliminary examination of the means by which a reduction might even be effected in the future in the forces and budgets above mentioned." The First Conference failed to agree upon a limitation or a restriction, but adopted unanimously the following resolution:

> The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

The Second Conference was equally unprepared to limit armaments, to place a restriction upon military or naval forces, or to bind the nations not to increase the budgets pertaining thereto. It will be remembered that the United States reserved the right to bring the question to discussion, although as such it did not figure on the program. Pursuant to this reservation and instructions from the Secretary of State the American delegation insisted that the subject be discussed and in and out of Conference lent it support. By general agreement a resolution was introduced, supported in an address by the first British delegate and in a letter written by the first American delegate on behalf of the delegation. The following resolution was thereupon unanimously adopted:

> The Second Peace Conference confirms the resolution adopted by the Conference of 1899 in regard to the limitation of military burdens; and in view of the fact that military burdens have considerably increased in nearly all countries since the said year, the Conference declares that it is highly desirable to see Governments take up again the serious study of that subject.

THE RECOMMENDATIONS OF THE CONFERENCE

In addition to the conventions, declarations, and resolution, the Conference emitted five desires or *vœux,* the first of which is in the nature of a resolution. Of each of these in turn—

> The Conference recommends to the signatory Powers the adoption of the project hereunto annexed, of a Convention for the

> establishment of a Court of Arbitral Justice and its putting in effect as soon as an accord shall be reached upon the choice of the judges and the constitution of the Court.

An analysis of this paragraph shows that the establishment of the Court is not the expression of a mere wish or desire on the part of the Conference, but that it is a recommendation to the Powers to undertake the establishment of the court. In the next place, the project of convention annexed to the recommendation is not to be submitted as a plan or as a model, but for adoption as the organic act of the Court. Again, the convention annexed and made a part of the recommendation goes forth not only with the approval of the Conference, but as a solemn act adopted by it. And, finally, accepting the convention as the organic act, the Conference recommends that the Court be definitely and permanently established by the Powers as soon as they shall have agreed upon a method of appointing the judges, who, when appointed, thus constitute the Court. It will be noted that the number of Powers necessary to establish the Court is not stated, nor is the number of judges determined. It follows, therefore, that the Powers wishing to establish the Court are free to adopt the project of convention, agree upon the method of choosing the judges, and establish the Court at The Hague for the trial of cases submitted by the contracting Powers.

The establishment of the Court of Arbitral Justice would not interfere with the Court of Arbitration instituted by the Conference of 1899, and continued by the Conference of 1907, for this latter is a temporary tribunal, erected for a particular purpose, to decide as arbiters a controversy submitted. The Court of Arbitral Justice, on the contrary, is meant to be a permanent court, composed of judges acting under a sense of judicial responsibility, representing the various legal systems of the world, and capable of assuring the continuity of arbitral jurisprudence. (Art. 1.) The contracting Powers are free to appoint either a large or a small number of judges; but it is provided in Article 3 that the judges so appointed shall hold office for a period of twelve years and that they shall be chosen from among persons enjoying the highest moral consideration who meet the requirements for admission in their respective countries to the high magistracy, or who shall be jurists of recognized competency in matters of international law. (Art. 2.)

From these provisions it is evident that the proposed institution

is to be not merely in name but in fact a court of justice; that it is to be permanent in the sense that it does not need to be constituted for any and every case submitted to it. It is obvious that such a court, acting under a sense of judicial responsibility, would decide, as a court, according to international law and equity, a question submitted to it, and that the idea of compromise hitherto so inseparable from arbitration, would be a stranger to this institution. The Court is said to be permanent in the sense that it holds, as courts do, certain specified terms for the trial of cases. For example, Article 14 says:

> The Court assembles in session once a year. The session begins on the third Wednesday of June and lasts until the calendar shall have been exhausted.
>
> The Court does not assemble in session if the meeting is deemed unnecessary by the delegation. If, however, a Power is a party to a case actually pending before the Court, the preliminary proceedings of which are completed or near completion, that Power has the right to demand that the session take place.
>
> The delegation may, in case of necessity, call an extraordinary session of the Court.

It was deemed inexpedient to have an empty court at The Hague, and it was felt that without a judicial committee capable of transacting the ordinary business that might be submitted, permanency in the true sense of the word would be lacking, therefore it is provided by Article 6 of the project that—

> The Court designates, every year, three judges who constitute a special delegation and three others who are to take their places in case of disability. They may be reelected. The vote is cast by blanket ballot. Those who obtain the larger number of votes are considered to be elected. The delegation elects its own president, who, failing a majority, is drawn by lot.
>
> A member of the delegation is barred from the exercise of his functions when the Power by which he was appointed, and under whose jurisdiction he is, is one of the parties to the case.
>
> The members of the delegation bring to a conclusion the cases that may have been referred to therein, even though their term of office should have expired.

Taking the two articles together, it is apparent that the Court as such is intended to be permanently in session at The Hague; that the judicial committee will attend to the smaller cases submitted,

and that the full Court will meet in ordinary or extraordinary session once a year or whenever the business before it would justify its assembling. The judges are intended to be permanent court officials and as such to receive stated salaries whether they are actively engaged at The Hague in the trial of cases or not. The compensation is small (6,000 florins), but the honor is great. If, however, a judge sits as a trial judge at The Hague, his expenses to and from The Hague are paid according to the rate allowed in the home country for the traveling expenses of a judge in service, and in addition the judge is to receive the further sum of 100 florins a day during his official service in the examination or trial of cases.

The first article speaks of a court free and easy of access. It is easy of access because it is permanent and has stated terms. It is free because no fees are paid for entrance, and it is likewise free in this sense: That the salaries of the judges are not paid by the litigating parties, but proportionately by the contracting Powers. The jurisdiction of the Court is very wide; for example, "the Court of Arbitral Justice is competent to decide all cases which are submitted to it by virtue of a general stipulation of arbitration or by a special agreement" (Art. 17); that is to say, if there be a general treaty of arbitration designating the Court of Arbitral Justice, the Court is competent, if the cause of action be presented, to assume jurisdiction and to decide the case. It may be that parties to a controversy may submit the finding of a commission of inquiry to the Court in order to have the legal responsibility established in an appropriate case, or it may be that parties to an arbitration may wish to have the case examined when on appeal or *de novo* by the Court of Arbitral Justice. In such a case, by virtue of the special agreement of the parties litigant, the Court is invested with jurisdiction.

It was not thought advisable to clothe the judicial committee with the jurisdiction of the full Court, lest there be two competing institutions. The judicial committee is, however, expected to be a serviceable body, and its jurisdiction is commensurate with its dignity. For example, Article 18 provides:

> The delegation (Art. 6) is competent—
>
> 1. To hear arbitration cases coming under the foregoing article, if the parties agree upon demanding the application of summary procedure as determined in Title IV, Chapter IV, of the Convention of July 29, 1899.
>
> 2. To institute an inquiry by virtue of and in conformity to Title

> III of the Convention of July 29, 1899, in so far as the delegation may have been charged with this duty by the litigants acting in common accord. With the assent of the parties and in derogation of Article 7, section 1, members of the delegation who took part in the inquiry may sit as judges if the dispute comes for arbitration before either the Court or the delegation itself.

The judicial committee, therefore, is competent to sit as the Court of summary proceeding in cases where parties litigant agree to make use of the summary proceeding of the revised convention. It is likewise competent to sit as a commission of inquiry; and as the commission of inquiry finds facts, there seems to be no reason why the members of the judicial committee may not sit as judges if the litigation is submitted to the full Court or to the delegation.

Article 19 invests the judicial committee with the power to frame the special agreement—that is to say, the *compromis* provided for in Article 52 of the Convention for the peaceful adjustment of international differences, already mentioned—unless there be an agreement or stipulation to the contrary.

The procedure of the Court has not been neglected, but finds an appropriate place in the project of convention.

The establishment of the permanent court was proposed by the American delegation, was accepted in principle and loyally supported by the delegations of Germany and Great Britain, and the project actually framed and recommended by the Conference is the joint work of the American, German, and British delegations. It should be said, however, that the project could not have been adopted without the loyal and unstinted support of France.

From this brief exposition it is evident that the foundations of a permanent court have been broadly and firmly laid; that the organization, jurisdiction, and procedure have been drafted and recommended in the form of a code which the Powers or any number of them may accept and, by agreeing upon the appointment of judges, call into being a court at once permanent and international. A little time, a little patience, and the great work is accomplished.

The nature and purpose of the second and third *vœux* of the Conference can not well be expressed in more precise and apt terms than those used by the military delegate in his report of the proceedings of the second commission. The following paragraphs, therefore, are taken from such report:

It has been seen that both the committee and the Conference finally rejected a proposition which had been prepared with a view to minimize the effects of war upon neutral commerce and in conformity with the tendencies of modern industry and trade, which demand for their development and maintenance the widest markets and which are in the highest degree sensitive to the disturbing effects of war.

The German proposition, by protecting stock of goods in the hands of neutral agents in belligerent territory from seizure or requisition, was calculated to give to neutral undertakings the broadest immunity from belligerent interference by restricting the burdens and operations of war to the belligerent States and their subjects. But the proposition so conceived and submitted was dismissed with the following expression of desire, which may be accepted as showing the importance which is attached to the development of modern industry and commerce by a majority of the Governments of the civilized world:

The Conference expresses the hope—

I. That in case of war the competent authorities, civil and military, should make it their special duty to assure and protect the commercial and industrial relations between the belligerent Powers and neutral States.

II. That the high (signatory) Powers should seek to establish in agreements with each other uniform contractural undertakings determining, in respect to military burdens, the relations of each State in respect to the strangers established in its territory.

The fourth *vœu* of the Conference is as follows:

4. The Conference utters the wish that the elaboration of regulations relative to laws and customs of maritime warfare may figure in the program of the next Conference, and that in any case the Powers apply, as far as possible, to maritime warfare the principles of the Convention relative to the laws and customs of war on land.

Its adoption was due to the inability of the Conference to codify the law of maritime warfare as the Conference of 1899 had codified the laws and customs of war on land. The reasons for this failure need not be set forth, because the "desire" of the Conference is that the regulation of the laws and customs of maritime warfare be included in the program of the Third Conference. The concluding portion of the desire is in the nature of a recommendation, namely, that the Powers apply as far as possible to naval warfare the prin-

ciples of the laws and customs of warfare on land. It is likewise unnecessary to discuss this phrase, as it is not binding upon any Power so to do, and the measure of the application naturally depends upon the judgment of each of the Powers.

The final desire of the Conference is in the nature of a recommendation and is as follows:

> Lastly, the Conference recommends to the Powers the holding of a Third Peace Conference which might take place within a period similar to that which has elapsed since the preceding Conference on a date to be set by joint agreement among the Powers, and it draws their attention to the necessity of preparing the labors of that Third Conference sufficiently in advance to have its deliberations follow their course with the requisite authority and speed.
>
> In order to achieve that object, the Conference thinks it would be very desirable that a preparatory committee be charged by the Governments about two years before the probable date of the meeting with the duty of collecting the various propositions to be brought before the Conference, to seek out the matters susceptible of an early international settlement, and to prepare a program which the Governments should determine upon early enough to permit of its being thoroughly examined in each country. The committee should further be charged with the duty of proposing a mode of organization and procedure for the conference itself.

The desire of the friends of progress is to have the Hague Conference a permanent institution, which meets at certain regular periods, automatically if possible, and beyond the control of any one Power. The American delegation was instructed to secure, if possible, this result, and through the efforts of the American delegation this result was reached in large measure. It is difficult, if not impossible, for one legislative body to bind its successor. It is doubly difficult for a quasi-legislative or diplomatic assembly to bind a succeeding assembly. It was therefore thought advisable not to attempt to fix the date absolutely, but to recommend that a Third Conference meet within or at about the period which has elapsed between the calling of the First and the assembling of the Second Conference, leaving the exact date to be fixed by the Powers.

Experience has shown that much time is lost not merely in organizing a Conference, but in preparing and presenting the various projects. It is desirable that the projects be prepared in advance so that they may be presented, printed, and distributed at the opening of the ses-

sion. This the Conference recommended. But to prepare the various propositions to be submitted to the Conference it is necessary to determine in advance, at least tentatively, the program. The Conference therefore recommended that some two years before the probable date of the Conference a preparatory committee be charged by the various Governments to collect propositions, to ascertain the matters susceptible of international regulation, and to prepare the program sufficiently in advance of the meeting that it may be seriously and maturely considered by each Government intending to take part.

The wisdom of these provisions is so apparent that any justification of them seems unnecessary. The last clause, however, can not be passed in silence, as its importance is fundamental; for, in simple terms, it means that the Conference is not to be organized or the method of procedure determined by any single Power. In other words, the Conference, it would seem, is to be given over to itself. The committee of the Powers is charged with the duty of proposing a mode of organization and procedure for the Conference, and it can not be doubted that the committee, consisting of leading and representative Powers, will propose a mode of organization and procedure which will permit the Conference to organize itself and conduct its proceedings without requiring the guidance and direction of any particular Power. Its officers may be elected by the Conference, rather than appointed, and if so elected or selected by the Conference it is safe to assume that they will be not only in harmony with its purposes, but in full sympathy with the spirit of the Conference. In any case the recommendation is of the greatest importance, because it shows a unanimous desire on the part of the Powers present for the calling of a Third Conference, and it indicates in no uncertain terms that the Conference in becoming in the largest sense international is not to be under the control or predominance of any one nation.

Such is, in brief, the work of the Second International Peace Conference. It is believed that the various measures adopted by it and recommended to the favorable consideration of the Powers will meet with general approval. It is hoped that the reasons set forth, briefly, in the present report may justify the delegates in signing the various measures and that their action as a whole may meet with the approval of the Secretary of State.

We have the honor to be, sir, your obedient servants,

JOSEPH H. CHOATE, *Chairman.*
CHANDLER HALE, *Secretary.*